{deleted text} shows text that was in HB0289 but was deleted in HB0289S01.

inserted text shows text that was not in HB0289 but was inserted into HB0289S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Karianne Lisonbee proposes the following substitute bill:

VICTIM SERVICES AMENDMENTS

2021 GENERAL SESSION STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

2	senat	te S	sponsor:				

LONG TITLE

General Description:

This bill {creates} modifies the Utah {Division of Victim Services in the Office} Council for Victims of {the Attorney General} Crime (council).

Highlighted Provisions:

This bill:

- \{\text{defines terms};}
- creates the Utah Division of Victim Services in the Office of the Attorney General;
 - describes the qualifications for the director of the Division of Victim Services;
- moves the Utah Office for Victims of Crime from the governor's office to the
 Division of Victim Services;
 - reassigns domestic violence service responsibilities from the Division of Child and Family Services to the Division of Victim Services;

- moves the oversight of the Utah Council on Victims of Crime from the governor's office to the Division of Victim Services modifies the membership of the council;
 - <u>▶ allows the council to advocate for a victim of crime in appellate courts;</u>
 - <u>▶ clarifies the duties of the staff assigned to the council;</u> and
 - makes technical changes.

Money Appropriated in this Bill:

None

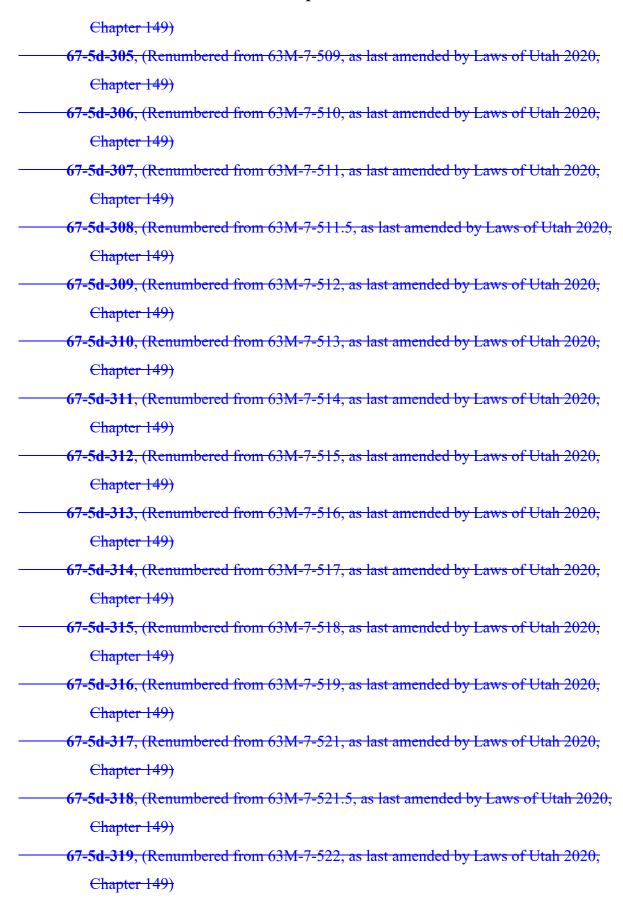
Other Special Clauses:

None

Utah Code Sections Affected:

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AMENDS:
       \{17-16-21\} 63M-7-601, as last amended by Laws of Utah \{2018\} 2019, Chapter \{347\}
      24-4-117, as last amended by Laws of Utah 2015, Chapter 134
      35A-8-901}246
       63M-7-602, as renumbered and amended by Laws of Utah {2012}2008, Chapter
          <del>{212}</del>382
       <del>{36-12-7}</del>63M-7-603, as last amended by Laws of Utah <del>{2020, Chapter 343</del>}
      53-1-106, as last amended by Laws of Utah 2019, Chapter 441
      53-6-213, as last amended by Laws of Utah 2011, Chapter 131
      62A-4a-102, as last amended by Laws of Utah 2019, Chapter 335
      62A-4a-103, as last amended by Laws of Utah 2017, Chapter 323
      62A-4a-105, as last amended by Laws of Utah 2020, Chapters 108 and 250
      62A-4a-106, as last amended by Laws of Utah 2018, Chapter 53
      62A-4a-304, as last amended by Laws of Utah 2008, Chapters 299 and 382
      62A-4a-412, as last amended by Laws of Utah 2020, Chapters 193 and 258
      63A-12-100.5, as last amended by Laws of Utah 2015, Chapter 322
      63G-2-103, as last amended by Laws of Utah 2020, Chapter 365
      63G-7-102, as last amended by Laws of Utah 2019, Chapter 280
      63I-1-263, as last amended by Laws of Utah 2020, Chapters 82, 152, 154, 199, 230,
          303, 322, 336, 354, 360, 375, 405 and last amended by Coordination Clause, Laws
          of Utah 2020, Chapter 360
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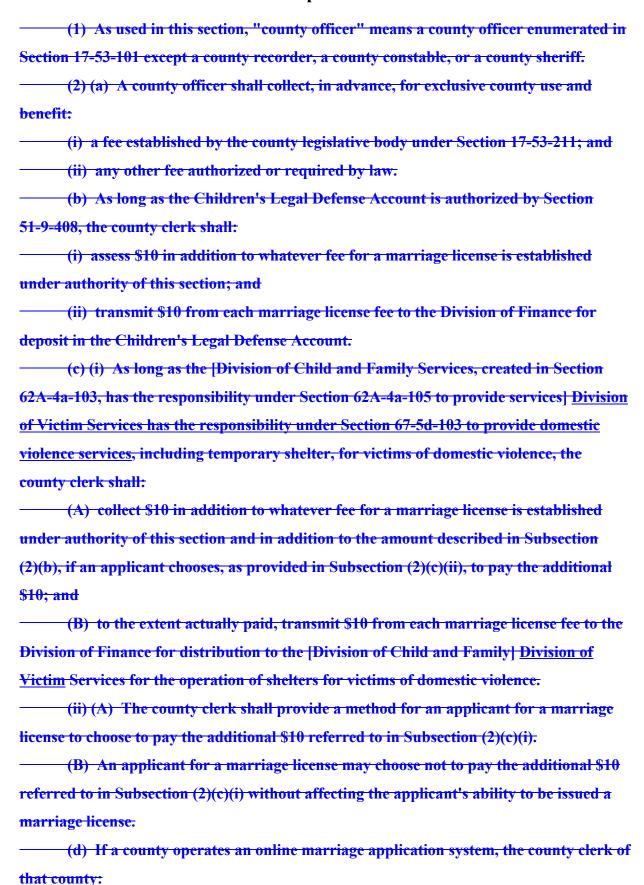
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63I-1-267, as last amended by Laws of Utah 2020, Chapter 154
      64-13-14.7, as last}2010, Chapter 82
       63M-7-605, as renumbered and amended by Laws of Utah 2008, Chapter 382
      67-5-1, as last amended by Laws of Utah 2020, Chapter 343
      76-3-201, as last amended by Laws of Utah 2017, Chapter 304
      77-37-4, as last amended by Laws of Utah 2018, Chapter 415
      77-37-5, as last amended by Laws of Utah 2011, Chapter 131
      77-38-302, as last amended by Laws of Utah 2020, Chapter 230
      78B-6-2105, as enacted by Laws of Utah 2020, Chapter 442
ENACTS:
      67-5d-101, Utah Code Annotated 1953
      67-5d-102, Utah Code Annotated 1953
      67-5d-103, Utah Code Annotated 1953
      67-5d-104, Utah Code Annotated 1953
      67-5d-301, Utah Code Annotated 1953
RENUMBERS AND AMENDS:
      67-5d-201, (Renumbered from 63M-7-601, as last amended by Laws of Utah 2019,
          Chapter 246)
      67-5d-202, (Renumbered from 63M-7-602, as renumbered and amended by Laws of
          Utah 2008, Chapter 382)
      67-5d-203, (Renumbered from 63M-7-603, as last amended by Laws of Utah 2010,
          Chapter 82)
      67-5d-204, (Renumbered from 63M-7-604, as repealed and reenacted by Laws of Utah
          2010, Chapter 286)
      67-5d-205, (Renumbered from 63M-7-605, as renumbered and amended by Laws of
          Utah 2008, Chapter 382)
      67-5d-302, (Renumbered from 63M-7-507, as last amended by Laws of Utah 2020,
          Chapter 149)
      67-5d-303, (Renumbered from 63M-7-508, as last amended by Laws of Utah 2020,
          Chapter 149)
      67-5d-304, (Renumbered from 63M-7-503, as last amended by Laws of Utah 2020,
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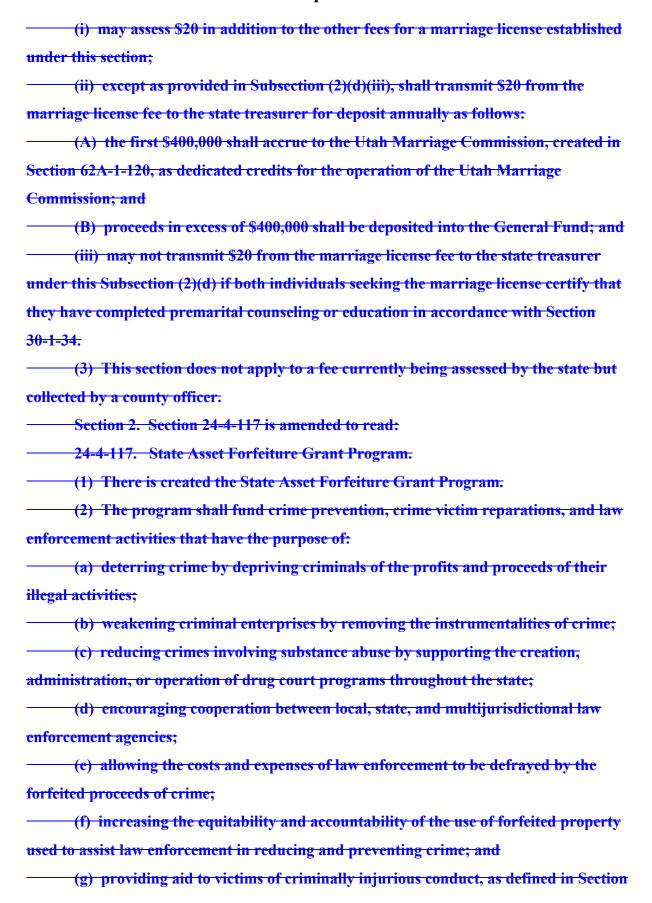


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67-5d-320, (Renumbered from 63M-7-523, as last amended by Laws of Utah 2020,
          Chapter 149)
      67-5d-321, (Renumbered from 63M-7-524, as last amended by Laws of Utah 2020,
          Chapter 149)
      67-5d-322, (Renumbered from 63M-7-525, as last amended by Laws of Utah 2020,
          Chapter 149)
      67-5d-323, (Renumbered from 63M-7-526, as enacted by Laws of Utah 2020, Chapter
          <del>230)</del>
      67-5d-401, (Renumbered from 63M-7-504, as last amended by Laws of Utah 2020,
          Chapters 352 and 373)
      67-5d-402, (Renumbered from 63M-7-506, as last amended by Laws of Utah 2020,
          Chapter 149)
      67-5d-501, (Renumbered from 67-5b-102, as last amended by Laws of Utah 2019,
          Chapter 246)
      67-5d-502, (Renumbered from 67-5b-103, as last amended by Laws of Utah 2016,
          Chapter 290)
      67-5d-503, (Renumbered from 67-5b-104, as last amended by Laws of Utah 2016,
          Chapter 290)
      67-5d-504, (Renumbered from 67-5b-105, as last amended by Laws of Utah 2019,
          Chapters 246 and 349)
       67-5d-505, (Renumbered from 67-5b-107, as last amended by Laws of Utah 2008,
          Chapter 382)
REPEALS:
       63M-7-501, as last amended by Laws of Utah 2011, Chapter 131
      63M-7-502, as last amended by Laws of Utah 2020, Chapters 149 and 230
      63M-7-505, as last amended by Laws of Utah 2020, Chapter 149
      67-5b-101, as last amended by Laws of Utah 2016, Chapter 290
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Be it enacted by the Legislature of the state of Utah:

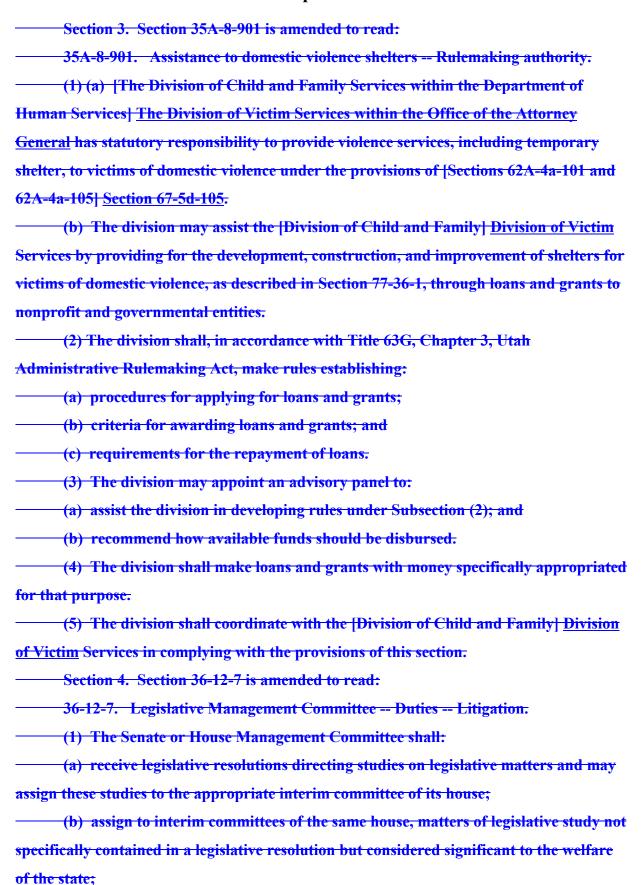
Section 1. Section {17-16-2}63M-7-601 is amended to read: {17-16-21. Fees of county officers.





[63M-7-502] 67-5d-102, who may be eligible for assistance under [Title 63M, Chapter 7, Part 5, Title 67, Chapter 5d, Part 3, Utah Office for Victims of Crime. (3) (a) When property is forfeited under this chapter and transferred to the account, upon appropriation the commission shall allocate and administer grants to state agencies, local law enforcement agencies, multijurisdictional law enforcement agencies, or political subdivisions of the state in compliance with this section and to further the program purposes under Subsection (2). (b) The commission may retain up to 3% of the annual appropriation from the account to pay for administrative costs incurred by the commission, including salary and benefits, equipment, supplies, or travel costs that are directly related to the administration of the program. (4) Agencies or political subdivisions shall apply for an award from the program by completing and submitting forms specified by the commission. (5) In granting the awards, the commission shall ensure that the amount of each award takes into consideration the: (a) demonstrated needs of the agency; (b) demonstrated ability of the agency to appropriately use the award; (c) degree to which the agency's need is offset through the agency's participation in federal equitable sharing or through other federal and state grant programs; and (d) agency's cooperation with other state and local agencies and task forces. (6) Applying agencies or political subdivisions shall demonstrate compliance with all reporting and policy requirements applicable under this chapter and under Title 63M, Chapter 7, Criminal Justice and Substance Abuse, in order to qualify as a potential award recipient. (7) (a) Recipient law enforcement agencies may only use award money after approval by the agency's legislative body. (b) The award money is nonlapsing. (8) A recipient state agency, local law enforcement agency, multijurisdictional law enforcement agency, or political subdivision shall use awards only for law enforcement purposes as described in this section or for victim reparations as described in Subsection (2)(g), and only as these purposes are specified by the agency or political subdivision in its

application for the award.
(9) Permissible law enforcement purposes for which award money may be use
include:
(a) controlled substance interdiction and enforcement activities;
(b) drug court programs;
(c) activities calculated to enhance future law enforcement investigations;
(d) law enforcement training that includes:
(i) implementation of the Fourth Amendment to the United States Constitution
and Utah Constitution, Article I, Section 7, and that addresses the protection of the
individual's right of due process;
(ii) protection of the rights of innocent property holders; and
(iii) the Tenth Amendment to the United States Constitution regarding states'
sovereignty and the states' reserved rights;
(e) law enforcement or detention facilities;
(f) law enforcement operations or equipment that are not routine costs or
operational expenses;
(g) drug, gang, or crime prevention education programs that are sponsored in
whole or in part by the law enforcement agency or its legislative body;
(h) matching funds for other state or federal law enforcement grants; and
(i) the payment of legal costs, attorney fees, and postjudgment interest in
forfeiture actions.
(10) Law enforcement purposes for which award money may not be granted o
used include:
(a) payment of salaries, retirement benefits, or bonuses to any person;
(b) payment of expenses not related to law enforcement;
(c) uses not specified in the agency's award application;
(d) uses not approved by the agency's legislative body;
(e) payments, transfers, or pass-through funding to entities other than law
enforcement agencies; or
(f) uses, payments, or expenses that are not within the scope of the agency's
functions.

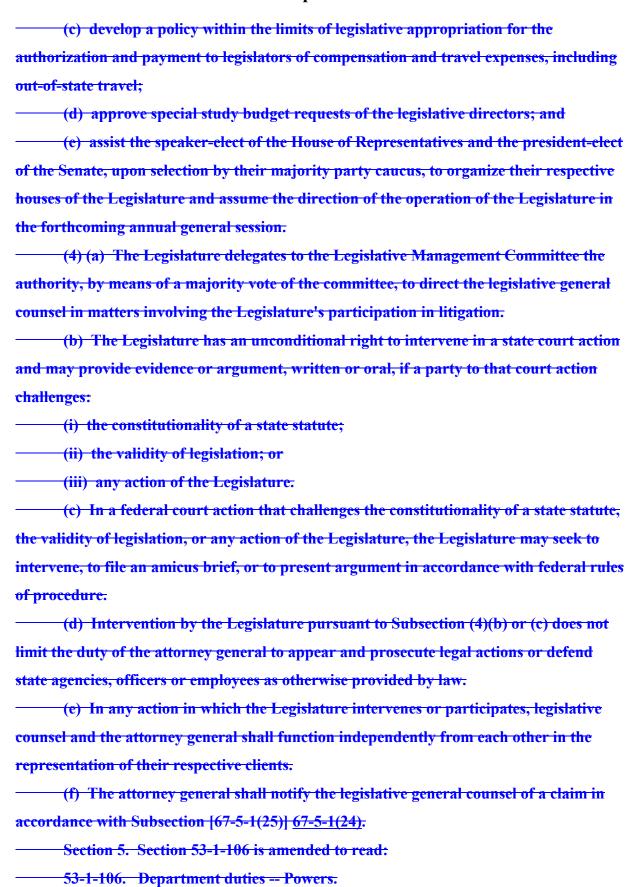


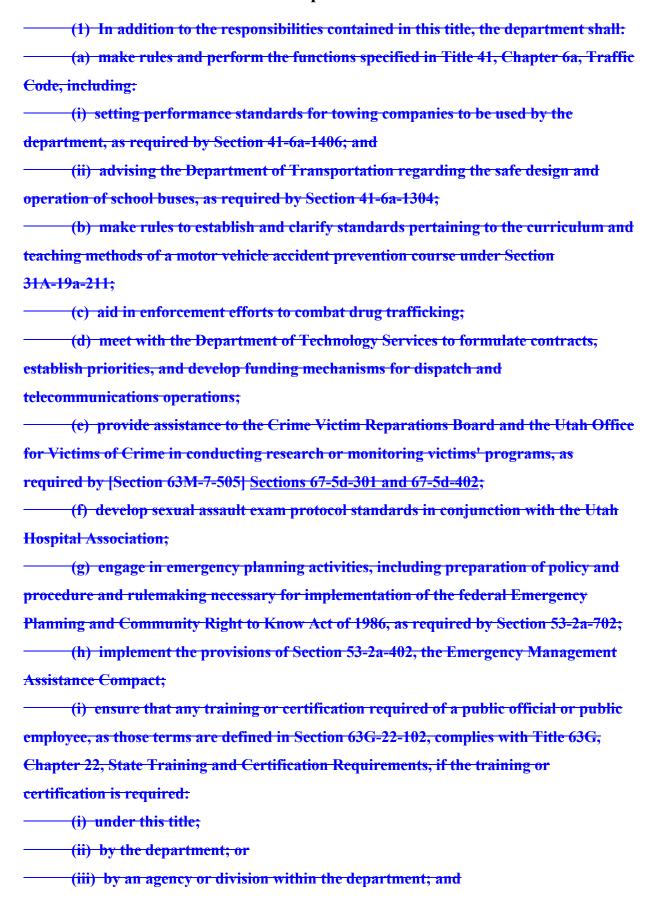
- (c) receive requests from interim committees of its house for matters to be included on the study agenda of the requesting committee. Appropriate bases for denying a study include inadequate funding to properly complete the study or duplication of the work;
- (d) establish a budget account for interim committee day as designated by

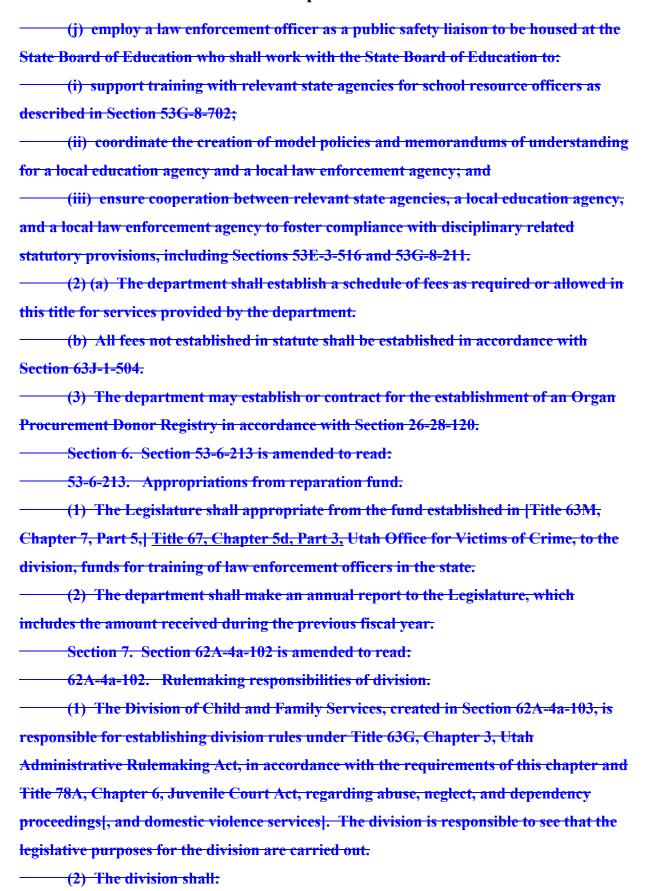
 Legislative Management Committee and for all other legislative committees of its house

 and allocate to that account sufficient funds to adequately provide for the work of the

 committee; and
- (e) designate the time and place for periodic meetings of the interim committees.
- (2) To maximize the use of legislators' available time, the Senate and House Management Committees should attempt to schedule the committee meetings of their respective houses during the same one or two-day period each month. This does not preclude an interim committee from meeting at any time it determines necessary to complete its business.
- (3) The Legislative Management Committee shall:
- (a) employ, after recommendation of the appropriate subcommittee of the Legislative Management Committee, without regard to political affiliation, and subject to approval of a majority vote of both houses, persons qualified for the positions of director of the Office of Legislative Research and General Counsel, legislative fiscal analyst, legislative general counsel, and legislative auditor general. Appointments to these positions shall be for terms of six years subject to renewal under the same procedure as the original appointment. A person may be removed from any of these offices before the expiration of the person's term only by a majority vote of both houses of the Legislature or by a two-thirds vote of the management committee for such causes as inefficiency, incompetency, failure to maintain skills or adequate performance levels, insubordination, misfeasance, malfeasance, or nonfeasance in office. If a vacancy occurs in any of these offices after adjournment of the Legislature, the committee shall appoint an individual to fill the vacancy until such time as the person is approved or rejected by majority vote of the next session of the Legislature;
- (b) develop policies for personnel management, compensation, and training of all professional legislative staff;



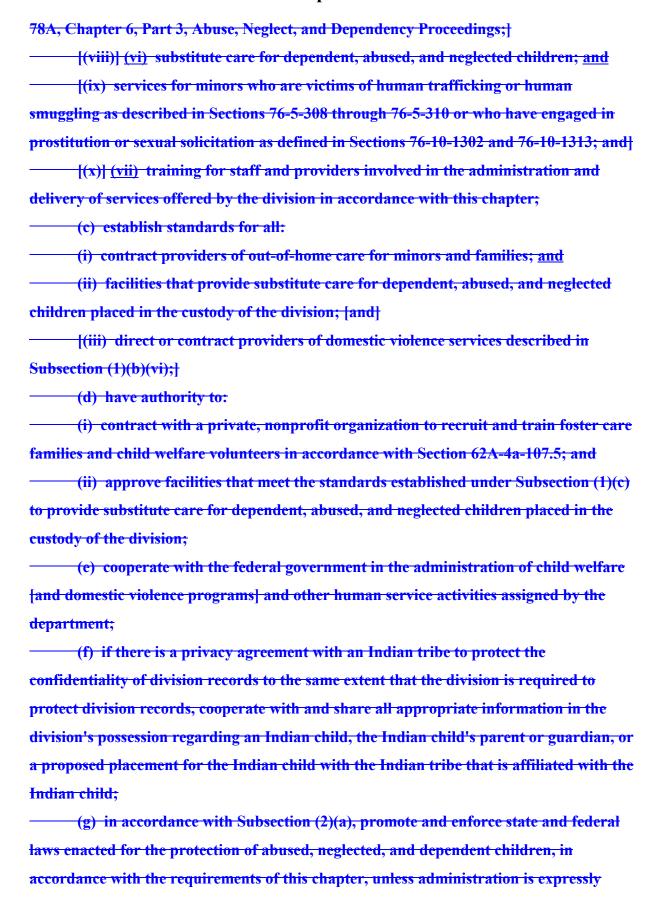




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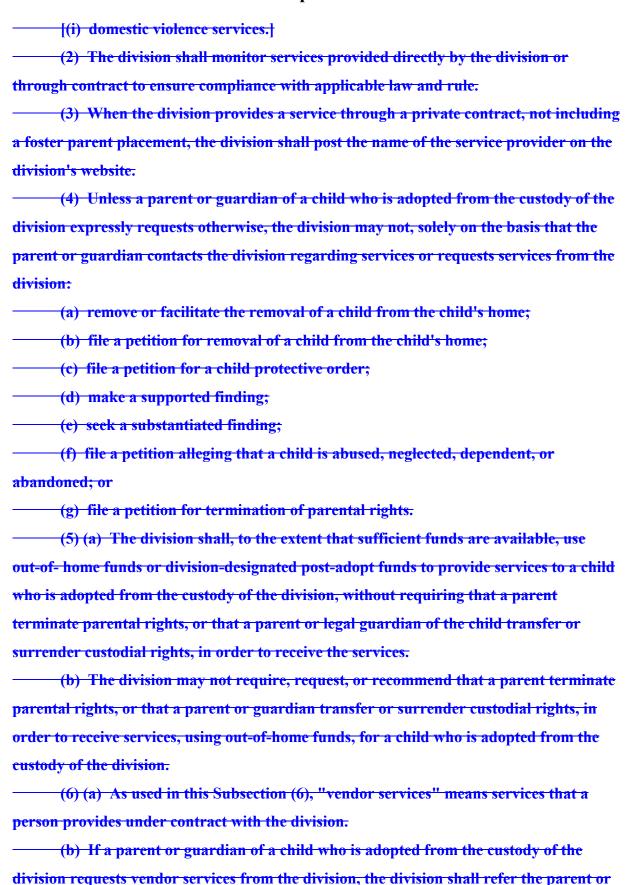
(a) approve fee schedules for programs within the division; (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish rules to ensure that private citizens, consumers, foster parents, private contract providers, allied state and local agencies, and others are provided with an opportunity to comment and provide input regarding any new rule or proposed revision of an existing rule; and (c) provide a mechanism for: (i) systematic and regular review of existing rules, including an annual review of all division rules to ensure that rules comply with the Utah Code; and (ii) consideration of rule changes proposed by the persons and agencies described in Subsection (2)(b). (3) (a) The division shall establish rules for the determination of eligibility for services offered by the division in accordance with this chapter. (b) The division may, by rule, establish eligibility standards for consumers. (4) The division shall adopt and maintain rules regarding placement for adoption or foster care that are consistent with, and no more restrictive than, applicable statutory provisions. Section 8. Section 62A-4a-103 is amended to read: 62A-4a-103. Division -- Creation -- Purpose. (1) (a) There is created the Division of Child and Family Services within the department, under the administration and general supervision of the executive director. (b) The division is the child, youth, and family services authority of the state and has all functions, powers, duties, rights, and responsibilities created in accordance with this chapter, except those assumed by the department. (2) (a) The primary purpose of the division is to provide child welfare services. (b) The division shall, when possible and appropriate, provide in-home services for the preservation of families in an effort to protect the child from the trauma of separation from the child's family, protect the integrity of the family, and the constitutional rights of parents. In keeping with its ultimate goal and purpose of protecting children, however, when a child's welfare is endangered or reasonable efforts to maintain or reunify a child with the child's family have failed, the division shall act in

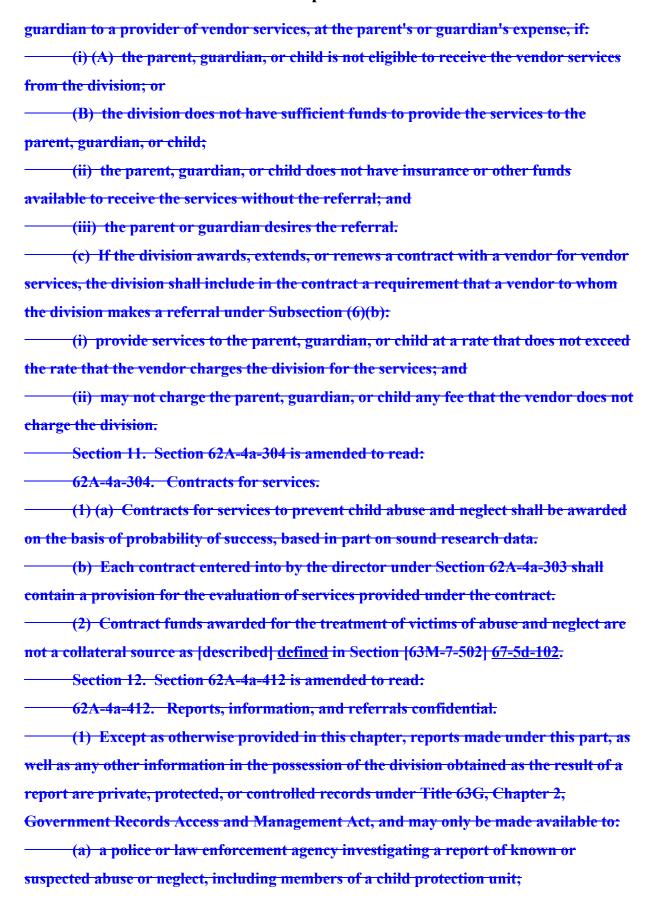
a timely fashion in accordance with the requirements of this chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, to provide the child with a stable, permanent environment. (3) The division shall also provide domestic violence services in accordance with federal law. Section 9. Section 62A-4a-105 is amended to read: 62A-4a-105. Division responsibilities. (1) The division shall: (a) administer services to minors and families, including: (i) child welfare services; and (ii) domestic violence services; and [(iii)] (ii) all other responsibilities that the Legislature or the executive director may assign to the division; (b) provide the following services: (i) financial and other assistance to an individual adopting a child with special needs under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the child as a legal ward of the state; (ii) non-custodial and in-home services, including: (A) services designed to prevent family break-up; and (B) family preservation services; (iii) reunification services to families whose children are in substitute care in accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act; (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse or neglect of a child in that family; (v) shelter care in accordance with the requirements of this chapter and Title 78A, **Chapter 6, Juvenile Court Act;** (vi) domestic violence services, in accordance with the requirements of federal law; (vii) protective services to victims of domestic violence, as defined in Section 77-36-1, and their children, in accordance with the provisions of this chapter and Title



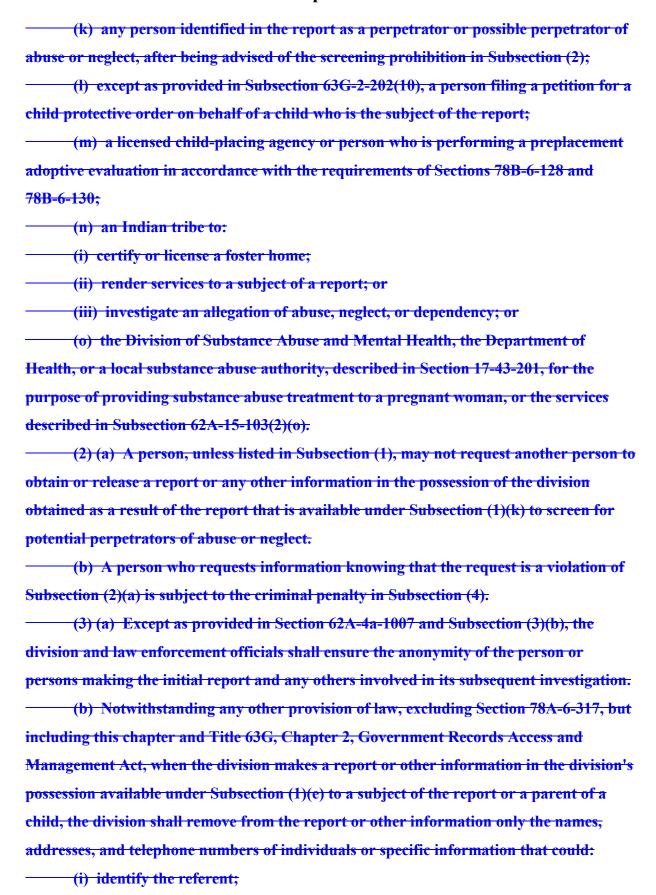
vested in another division or department of the state; (h) cooperate with the Workforce Development Division within the Department of Workforce Services in meeting the social and economic needs of an individual who is eligible for public assistance; (i) compile relevant information, statistics, and reports on child and family service matters in the state; (j) prepare and submit to the department, the governor, and the Legislature reports of the operation and administration of the division in accordance with the requirements of Sections 62A-4a-117 and 62A-4a-118; (k) within appropriations from the Legislature, provide or contract for a variety of domestic violence services and treatment methods; [(1)] (k) ensure regular, periodic publication, including electronic publication, regarding the number of children in the custody of the division who: (i) have a permanency goal of adoption; or (ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314, and promote adoption of those children; [(m)] (1) subject to Subsection (2)(b), refer an individual receiving services from the division to the local substance abuse authority or other private or public resource for a court-ordered drug screening test; [(n)] (m) report before November 30, 2020, and every third year thereafter, to the **Social Services Appropriations Subcommittee regarding:** (i) the daily reimbursement rate that is provided to licensed foster parents based on level of care; (ii) the amount of money spent on daily reimbursements for licensed foster parents in the state during the previous fiscal year; and (iii) any recommended changes to the division's budget to support the daily reimbursement rates described in Subsection [(1)(n)(i)] (1)(m)(i); and [(o)] (n) perform other duties and functions required by law. (2) (a) In carrying out the requirements of Subsection (1)(g), the division shall: (i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and with all public and private licensed child welfare agencies and institutions to develop

and administer a broad range of services and support; (ii) take the initiative in all matters involving the protection of abused or neglected children, if adequate provisions have not been made or are not likely to be made; and (iii) make expenditures necessary for the care and protection of the children described in this Subsection (2)(a), within the division's budget. (b) When an individual is referred to a local substance abuse authority or other private or public resource for court-ordered drug screening under Subsection [(1)(m)] (1)(1), the court shall order the individual to pay all costs of the tests unless: (i) the cost of the drug screening is specifically funded or provided for by other federal or state programs; (ii) the individual is a participant in a drug court; or (iii) the court finds that the individual is impecunious. (3) Except to the extent provided by rule, the division is not responsible for investigating domestic violence in the presence of a child, as described in Section 76-5-109.1. (4) The division may not require a parent who has a child in the custody of the division to pay for some or all of the cost of any drug testing the parent is required to undergo. Section 10. Section 62A-4a-106 is amended to read: 62A-4a-106. Services provided by division. (1) The division may provide, directly or through contract, services that include the following: (a) adoptions; (b) day care for children; (c) out-of-home placements for minors; (d) health-related services; (e) homemaking services; (f) home management services; (g) protective services for minors; and (h) transportation services[; and].

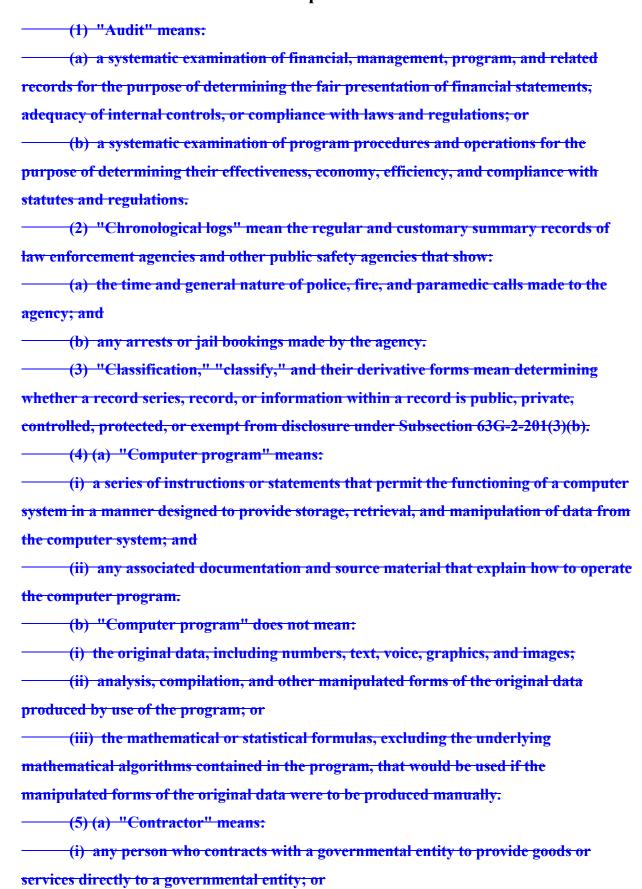


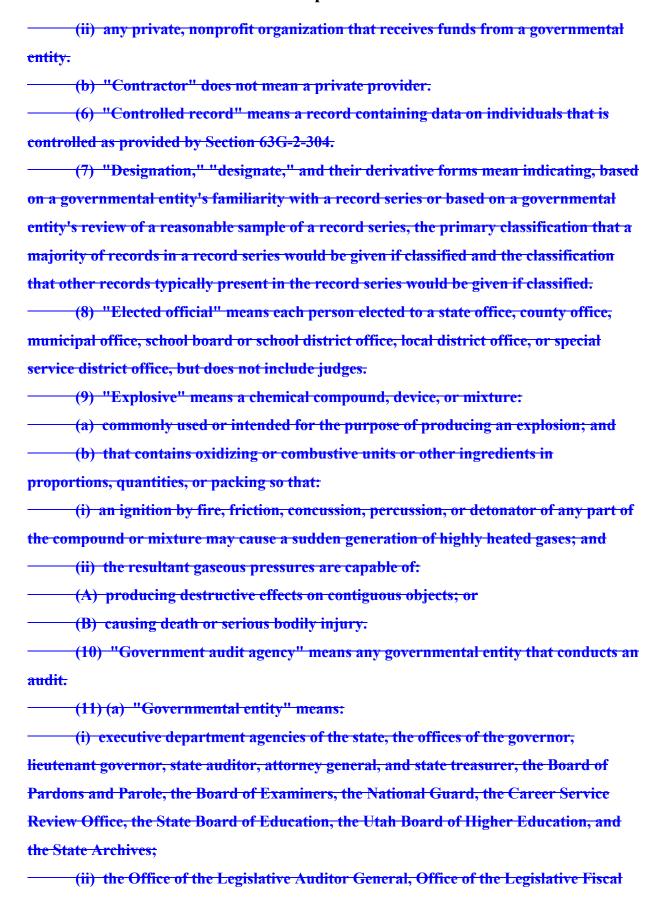


(b) a physician who reasonably believes that a child may be the subject of abuse or neglect; (c) an agency that has responsibility or authority to care for, treat, or supervise a minor who is the subject of a report; (d) a contract provider that has a written contract with the division to render services to a minor who is the subject of a report; (e) except as provided in Subsection 63G-2-202(10), a subject of the report, the natural parents of the child, and the guardian ad litem; (f) a court, upon a finding that access to the records may be necessary for the determination of an issue before the court, provided that in a divorce, custody, or related proceeding between private parties, the record alone is: (i) limited to objective or undisputed facts that were verified at the time of the investigation; and (ii) devoid of conclusions drawn by the division or any of the division's workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person; (g) an office of the public prosecutor or its deputies in performing an official duty; (h) a person authorized by a Children's Justice Center, for the purposes described in Section [67-5b-102] 67-5d-501; (i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses; (i) the State Board of Education, acting on behalf of itself or on behalf of a local education agency, as defined in Section 63J-5-102, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated or supported findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;



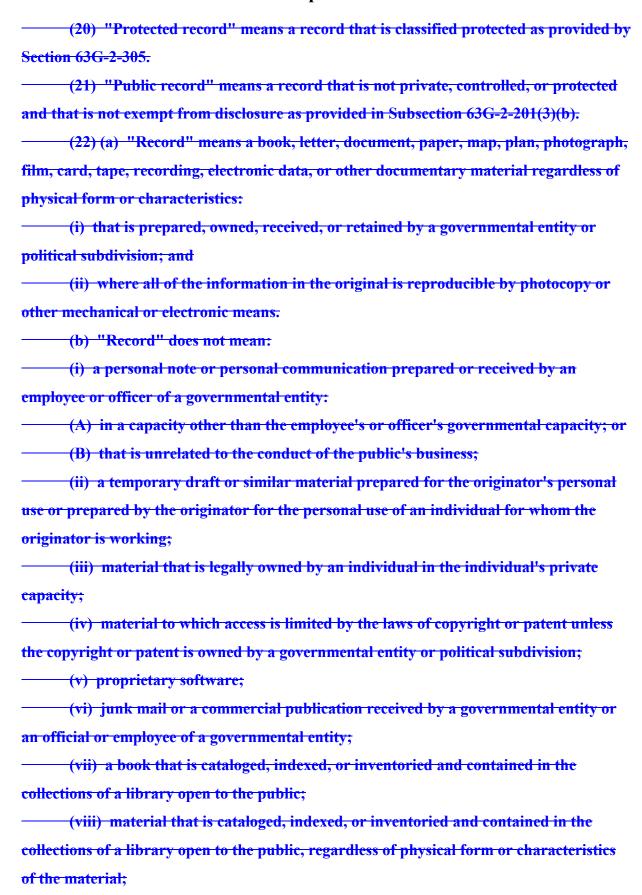
(ii) impede a criminal investigation; or
(iii) endanger a person's safety.
(4) Any person who [wilfully] willfully permits, or aides and abets the release of
data or information obtained as a result of this part, in the possession of the division or
contained on any part of the Management Information System, in violation of this part or
Sections 62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.
(5) The physician-patient privilege is not a ground for excluding evidence
regarding a child's injuries or the cause of those injuries, in any proceeding resulting
from a report made in good faith pursuant to this part.
(6) A child-placing agency or person who receives a report in connection with a
preplacement adoptive evaluation pursuant to Sections 78B-6-128 and 78B-6-130:
(a) may provide this report to the person who is the subject of the report; and
(b) may provide this report to a person who is performing a preplacement
adoptive evaluation in accordance with the requirement of Sections 78B-6-128 and
78B-6-130, or to a licensed child-placing agency or to an attorney seeking to facilitate an
adoption.
Section 13. Section 63A-12-100.5 is amended to read:
63A-12-100.5. Definitions.
(1) Except as provided under Subsection (2), the definitions in Section 63G-2-103
apply to this chapter.
(2) As used in this chapter:
(a) "division" or "state archives" means the Division of Archives and Records
Service; and
(b) "record" means:
(i) the same as that term is defined in Section 63G-2-103; or
(ii) a video or audio recording of an interview, or a transcript of the video or
audio recording, that is conducted at a Children's Justice Center established under
Section [67-5b-102] 67-5d-501, the release of which is governed by Section 77-37-4.
Section 14. Section 63G-2-103 is amended to read:
63G-2-103. Definitions.
As used in this chanter:

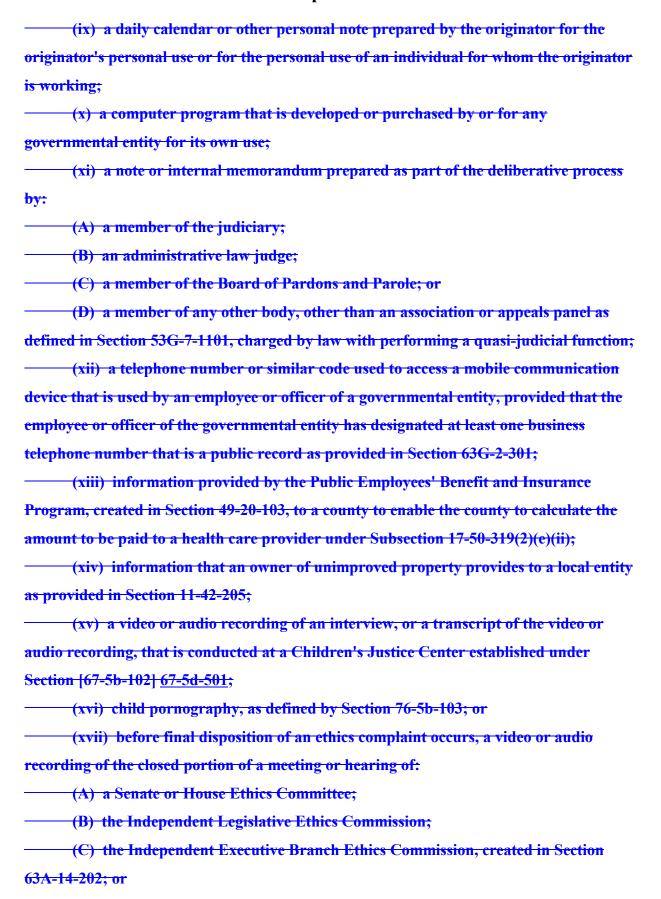


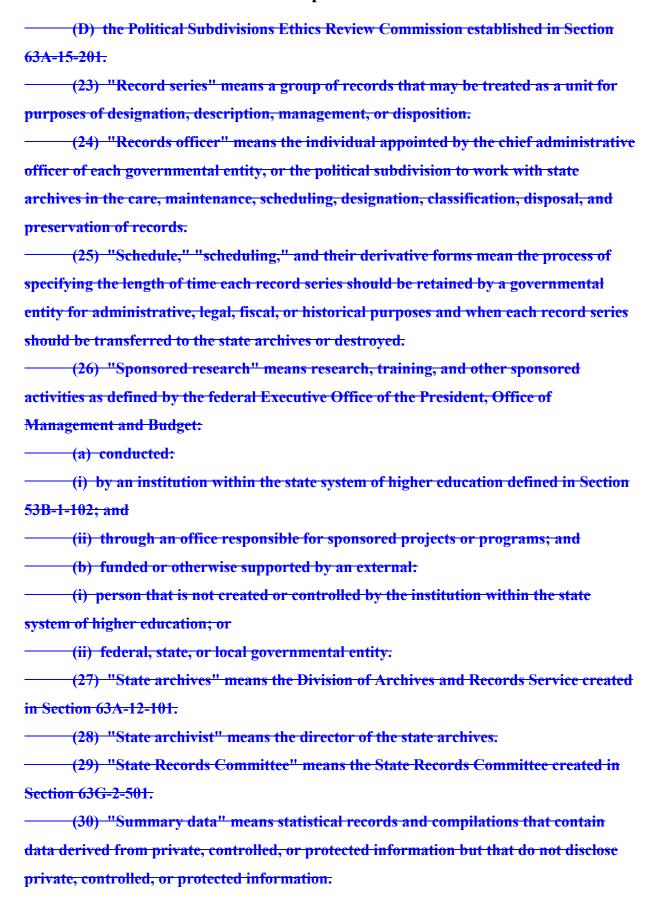


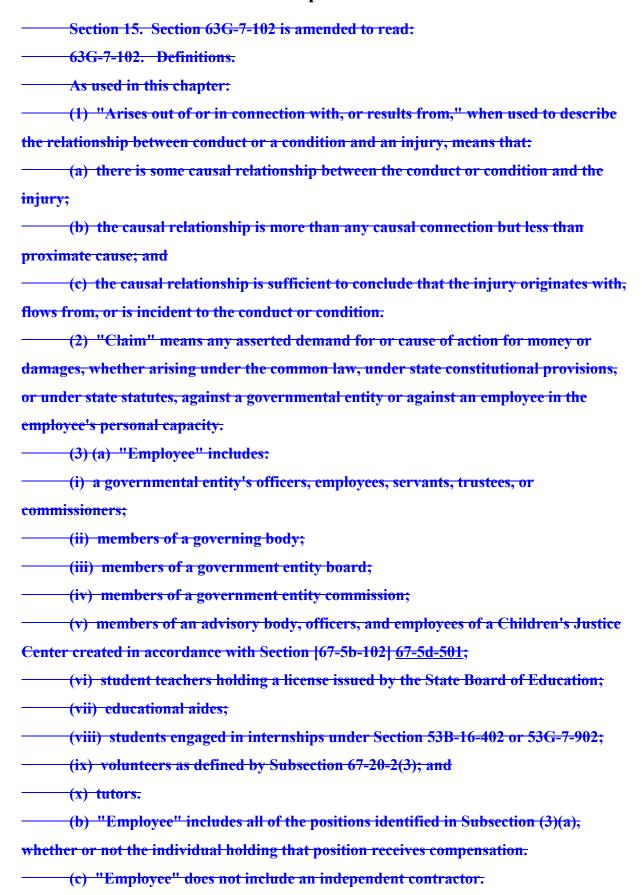
Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature; (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar administrative units in the judicial branch; (iv) any state-funded institution of higher education or public education; or (v) any political subdivision of the state, but, if a political subdivision has adopted an ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions. (b) "Governmental entity" also means: (i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business; (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking; (iii) as defined in Section 11-13a-102, a governmental nonprofit corporation; (iv) an association as defined in Section 53G-7-1101; (v) the Utah Independent Redistricting Commission; and (vi) a law enforcement agency, as defined in Section 53-1-102, that employs one or more law enforcement officers, as defined in Section 53-13-103. (c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53B-8a-103. (12) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer. (13) "Individual" means a human being. (14) (a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties

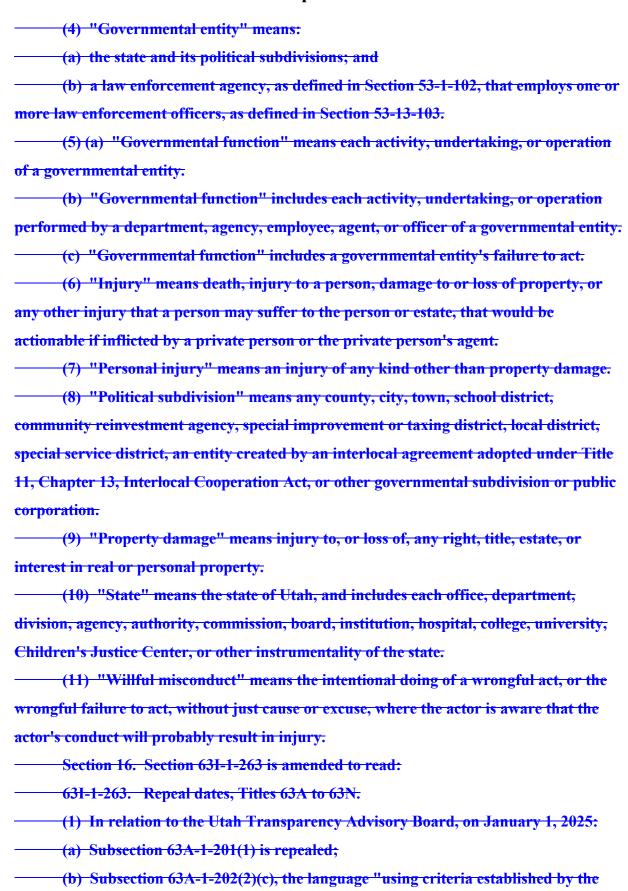
describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe: (i) the date, time, location, and nature of the complaint, the incident, or offense; (ii) names of victims; (iii) the nature or general scope of the agency's initial actions taken in response to the incident: (iv) the general nature of any injuries or estimate of damages sustained in the incident: (v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or (vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident. (b) Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (14)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under **Subsection 63G-2-201(3)(b).** (15) "Legislative body" means the Legislature. (16) "Notice of compliance" means a statement confirming that a governmental entity has complied with an order of the State Records Committee. (17) "Person" means: (a) an individual; (b) a nonprofit or profit corporation; (c) a partnership; (d) a sole proprietorship; (e) other type of business organization; or (f) any combination acting in concert with one another. (18) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public. (19) "Private record" means a record containing data on individuals that is private as provided by Section 63G-2-302.

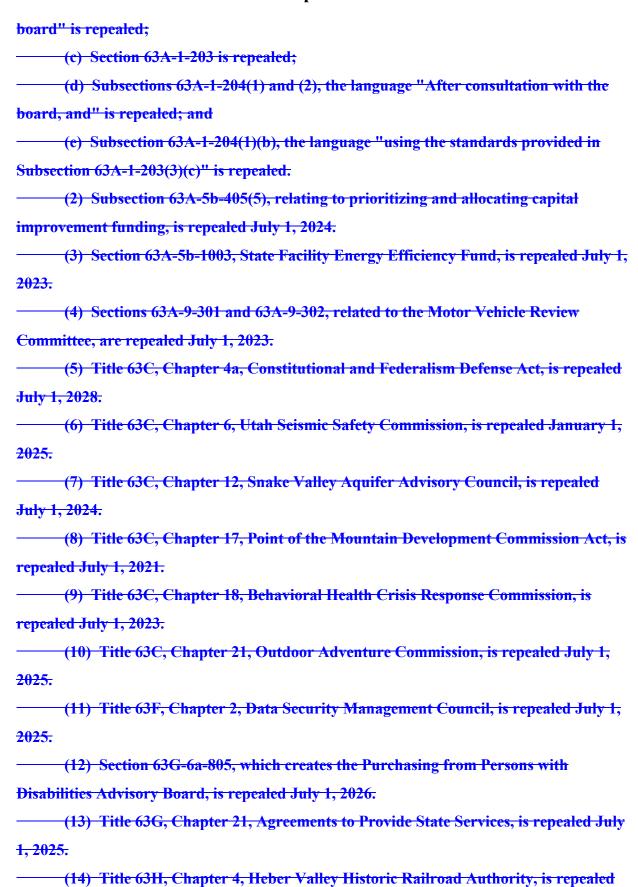


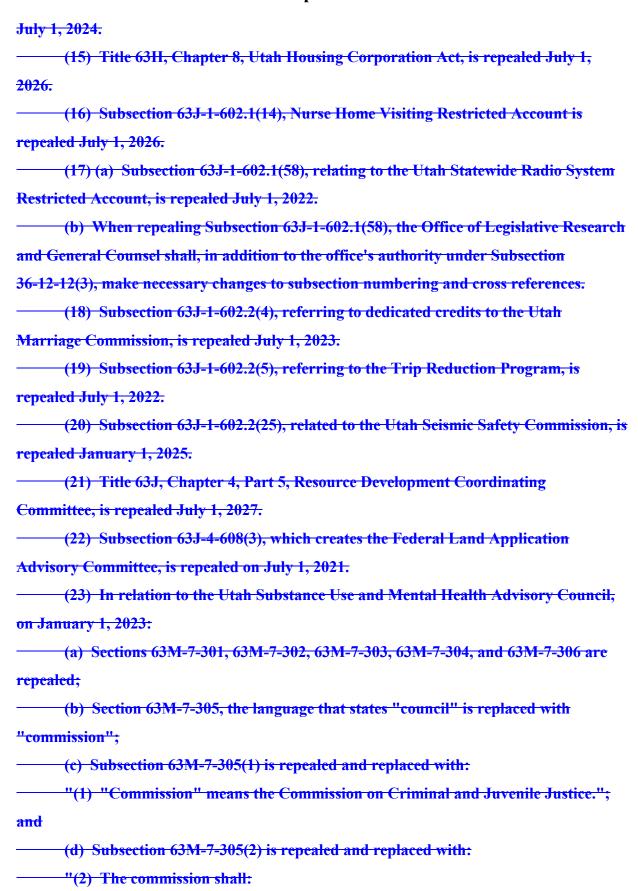




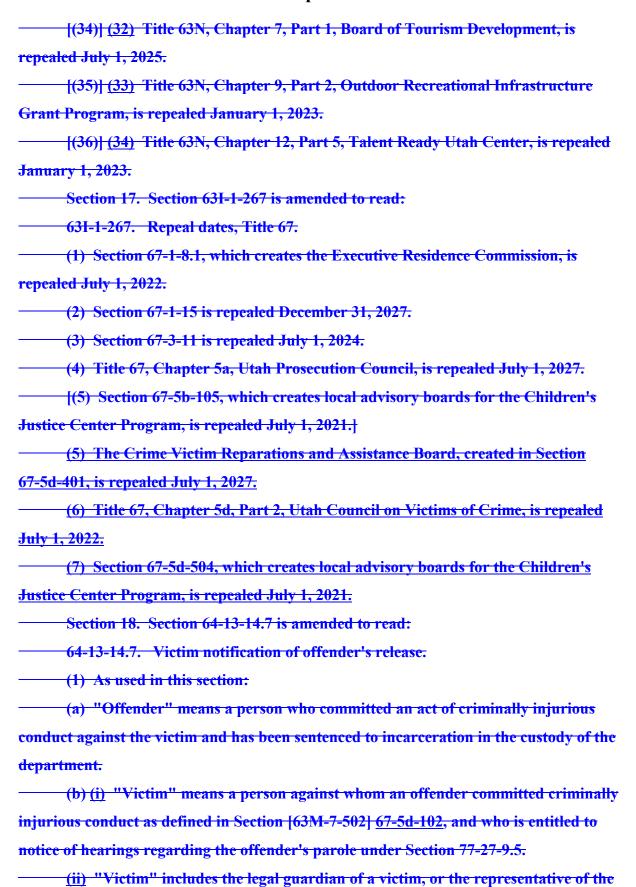








(a) provide ongoing oversight of the implementation, functions, and evaluation of the Drug-Related Offenses Reform Act; and (b) coordinate the implementation of Section 77-18-1.1 and related provisions in Subsections 77-18-1(5)(b)(iii) and (iv).". [(24) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2027. [(25) Title 63M, Chapter 7, Part 6, Utah Council on Victims of Crime, is repealed July 1, 2022.] [(26)] (24) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2021. [(27)] (25) Subsection 63N-1-301(4)(c), related to the Talent Ready Utah Board, is repealed January 1, 2023. [(28)] (26) Title 63N, Chapter 1, Part 5, Governor's Economic Development Coordinating Council, is repealed July 1, 2024. [(29)] (27) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2028. (30) (28) Section 63N-2-512 is repealed July 1, 2021. [(31)] (29) (a) Title 63N, Chapter 2, Part 6, Utah Small Business Jobs Act, is repealed January 1, 2021. (b) Section 59-9-107 regarding tax credits against premium taxes is repealed for calendar years beginning on or after January 1, 2021. (c) Notwithstanding Subsection [(31)(b)] (29)(b), an entity may carry forward a tax credit in accordance with Section 59-9-107 if: (i) the person is entitled to a tax credit under Section 59-9-107 on or before December 31, 2020; and (ii) the qualified equity investment that is the basis of the tax credit is certified under Section 63N-2-603 on or before December 31, 2023. [(32)] (30) Subsections 63N-3-109(2)(e) and 63N-3-109(2)(f)(i) are repealed July 1, 2023. [(33)] (31) Title 63N, Chapter 4, Part 4, Rural Employment Expansion Program, is repealed July 1, 2023.

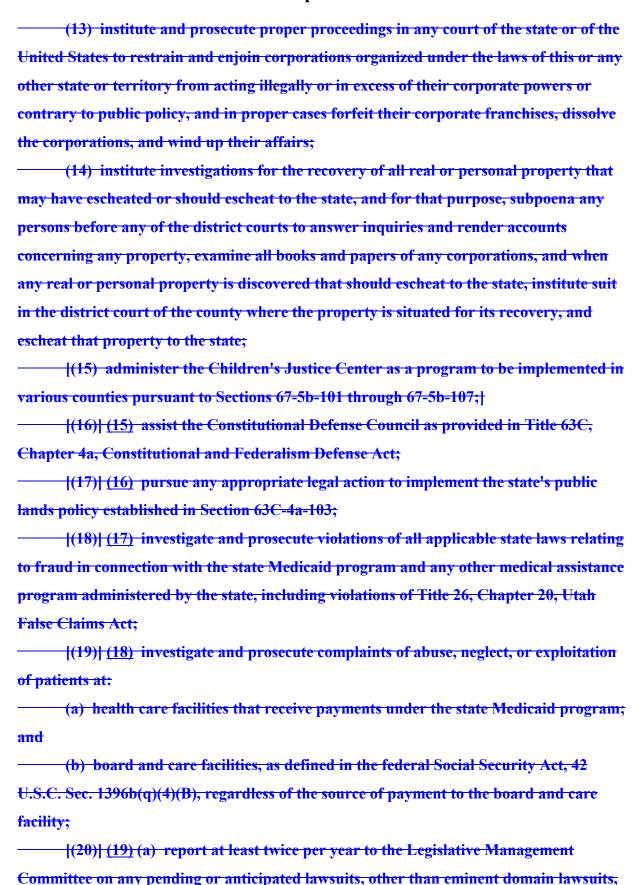


family of a victim who is deceased.

(2) (a) A victim shall be notified of an offender's release under Sections 64-13-14.5
and 64-13-14.7, or any other release to or from a half-way house, to a program outside of
the prison such as a rehabilitation program, state hospital, community center other than
a release on parole, commutation or termination for which notice is provided under
Sections 77-27-9.5 and 77-27-9.7, transfer of the offender to an out-of-state facility, or an
offender's escape, upon submitting a signed written request of notification to the
Department of Corrections. The request shall include a current mailing address and may
include current telephone numbers if the victim chooses.
(b) The department shall advise the victim of an offender's release or escape
under Subsection (2)(a), in writing. However, if written notice is not feasible because the
release is immediate or the offender escapes, the department shall make a reasonable
attempt to notify the victim by telephone if the victim has provided a telephone number
under Subsection (2)(a) and shall follow up with a written notice.
(3) Notice of victim rights under this section shall be provided to the victim in the
notice of hearings regarding parole under Section 77-27-9.5. The department shall
coordinate with the Board of Pardons and Parole to ensure the notice is implemented.
(4) A victim's request for notification under this section and any notification to a
victim under this section is private information that the department may not release:
(a) to the offender under any circumstances; or
(b) to any other party without the written consent of the victim.
(5) The department may make rules as necessary to implement this section.
(6) The department or its employees acting within the scope of their employment
are not civilly or criminally liable for failure to provide notice or improper notice under
this section unless the failure or impropriety is willful or grossly negligent.
Section 19. Section 67-5-1 is amended to read:
67-5-1. General duties.
The attorney general shall:
(1) perform all duties in a manner consistent with the attorney-client relationship
under Section 67-5-17;
(2) except as provided in Sections 10-3-928 and 17-18a-403, attend the Supreme

Court and the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all causes to which the state or any officer, board, or commission of the state in an official capacity is a party, and take charge, as attorney, of all civil legal matters in which the state is interested; (3) after judgment on any cause referred to in Subsection (2), direct the issuance of process as necessary to execute the judgment; (4) account for, and pay over to the proper officer, all money that comes into the attorney general's possession that belongs to the state; (5) keep a file of all cases in which the attorney general is required to appear, including any documents and papers showing the court in which the cases have been instituted and tried, and whether they are civil or criminal, and: (a) if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment and of any process issued if satisfied, and if not satisfied, documentation of the return of the sheriff; (b) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, and, if not executed, the reason for the delay or prevention; and (c) deliver this information to the attorney general's successor in office; (6) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of the district and county attorneys' offices, including the authority to: (a) require a district or county attorney of the state to, upon request, report on the status of public business entrusted to the district or county attorney's charge; or (b) review investigation results de novo and file criminal charges, if warranted, in any case involving a first degree felony, if: (i) a law enforcement agency submits investigation results to the county or district attorney of the jurisdiction where the incident occurred and the county or district attornev: (A) declines to file criminal charges; or (B) fails to screen the case for criminal charges within six months of the law

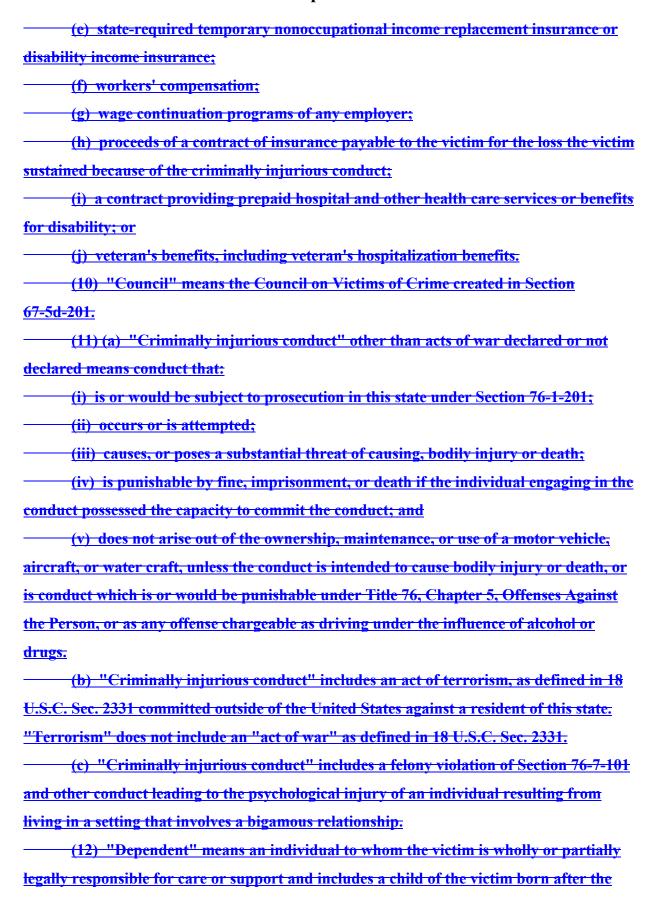
enforcement agency's submission of the investigation results; and (ii) after consultation with the county or district attorney of the jurisdiction where the incident occurred, the attorney general reasonably believes action by the attorney general would not interfere with an ongoing investigation or prosecution by the county or district attorney of the jurisdiction where the incident occurred; (7) give the attorney general's opinion in writing and without fee, when required, upon any question of law relating to the office of the requester: (a) in accordance with Section 67-5-1.1, to the Legislature or either house; (b) to any state officer, board, or commission; and (c) to any county attorney or district attorney; (8) when required by the public service or directed by the governor, assist any county, district, or city attorney in the discharge of county, district, or city attorney's duties: (9) purchase in the name of the state, under the direction of the state Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and enter satisfaction in whole or in part of the judgments as the consideration of the purchases; (10) when the property of a judgment debtor in any judgment mentioned in Subsection (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes; (11) when in the attorney general's opinion it is necessary for the collection or enforcement of any judgment, institute and prosecute on behalf of the state any action or proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated; (12) discharge the duties of a member of all official boards of which the attorney general is or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;



that might:
(i) cost the state more than \$500,000; or
(ii) require the state to take legally binding action that would cost more than
\$500,000 to implement; and
(b) if the meeting is closed, include an estimate of the state's potential financial of
other legal exposure in that report;
[(21)] (20) (a) submit a written report to the committees described in Subsection
[(21)] (20)(b) that summarizes any lawsuit or decision in which a court or the Office of
the Attorney General has determined that a state statute is unconstitutional or
unenforceable since the attorney general's last report under this Subsection [(21)] (20),
including any:
(i) settlements reached;
(ii) consent decrees entered;
(iii) judgments issued;
(iv) preliminary injunctions issued;
(v) temporary restraining orders issued; or
(vi) formal or informal policies of the Office of the Attorney General to not
enforce a law; and
(b) at least 30 days before the Legislature's May and November interim meetings
submit the report described in Subsection [(21)] (20)(a) to:
(i) the Legislative Management Committee;
(ii) the Judiciary Interim Committee; and
(iii) the Law Enforcement and Criminal Justice Interim Committee;
[(22)] (21) if the attorney general operates the Office of the Attorney General or
any portion of the Office of the Attorney General as an internal service fund agency in
accordance with Section 67-5-4, submit to the rate committee established in Section
67-5-34:
(a) a proposed rate and fee schedule in accordance with Subsection 67-5-34(4);
and
(b) any other information or analysis requested by the rate committee;
[(23)] (22) before the end of each calendar year create an annual nerformance

report for the Office of the Attorney General and post the report on the attorney general's website; [(24)] (23) ensure that any training required under this chapter complies with Title 63G, Chapter 22, State Training and Certification Requirements; [(25)] (24) notify the legislative general counsel in writing within three business days after the day on which the attorney general is officially notified of a claim, regardless of whether the claim is filed in state or federal court, that challenges: (a) the constitutionality of a state statute; (b) the validity of legislation; or (c) any action of the Legislature; [and] [(26)] (25) (a) notwithstanding Title 63G, Chapter 6a, Utah Procurement Code, provide a special advisor to the Office of the Governor and the Office of the Attorney General in matters relating to Native American and tribal issues to: (i) establish outreach to the tribes and affected counties and communities; and (ii) foster better relations and a cooperative framework; and (b) annually report to the Executive Offices and Criminal Justice Appropriations **Subcommittee regarding:** (i) the status of the work of the special advisor described in Subsection [(26)(a)] (25)(a); and (ii) whether the need remains for the ongoing appropriation to fund the special advisor described in Subsection [(26)(a).] (25)(a); and (26) administer the Division of Victim Services created in Section 67-5d-103. Section 20. Section 67-5d-101 is enacted to read: CHAPTER 5d. VICTIM SERVICES ACT Part 1. General Provisions -- Division of Victim Services 67-5d-101. Short title. This chapter is known as the "Victim Services Act." Section 21. Section 67-5d-102 is enacted to read: 67-5d-102. Definitions. As used in this chapter: (1) "Accomplice" means an individual who has engaged in criminal conduct as

described in Section 76-2-202. (2) "Board" means the Crime Victim Reparations and Assistance Board created under Section 67-5d-401. (3) "Bodily injury" means physical pain, illness, or any impairment of physical condition. (4) "Center" means a Children's Justice Center established in accordance with Section 67-5d-501. (5) "Claimant" means any of the following claiming reparations under this part: (a) a victim; (b) a dependent of a deceased victim; or (c) an individual or representative who files a reparations claim on behalf of a victim. (6) "Child" means an unemancipated individual who is under 18 years old. (7) "Child abuse case" means a juvenile, civil, or criminal case involving a child abuse victim. (8) "Child abuse victim" means a child 17 years of age or younger who is: (a) a victim of: (i) sexual abuse; or (ii) physical abuse; or (b) a victim or a critical witness in any criminal case, such as a child endangerment case described in Section 76-5-112.5. (9) "Collateral source" means any source of benefits or advantages for economic loss otherwise reparable under this part which the victim or claimant has received, or which is readily available to the victim from: (a) the offender; (b) the insurance of the offender or the victim; (c) the United States government or any of The United States government's agencies, a state or any of The United States government's political subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory state-funded programs; (d) social security, Medicare, and Medicaid;



HB0289S01 compared with HB0289 victim's death. (13) "Dependent's economic loss" means loss after the victim's death of contributions of things of economic value to the victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of victim's death. (14) "Dependent's replacement services loss" means loss reasonably and necessarily incurred by the dependent after the victim's death in obtaining services in lieu of those the decedent would have performed for the victim's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating the dependent's economic loss. (15) "Director" means the director of the office. (16) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon an individual: (a) convicted of a crime; (b) found delinquent; or (c) against whom a finding of sufficient facts for conviction or finding of delinquency is made. (17) "Division" means the Utah Division of Victim Services created in this chapter. (18) "Division director" means the director of the division. (19) "Domestic violence services" means: (a) temporary shelter, treatment, and related services to: (i) an individual who is a victim of abuse, as defined in Section 78B-7-102; and

(20) (a) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and if injury causes death, dependent's economic loss and dependent's replacement service loss.

been convicted of, or has pled guilty to, an act of domestic violence as defined in Section

Section 78B-7-102; and

77-36-1.

(ii) the dependent children of an individual who is a victim of abuse, as defined in

(b) treatment services for an individual who is alleged to have committed, has

(b) "Economic loss" includes economic detriment even if caused by pain and suffering or physical impairment. (c) "Economic loss" does not include noneconomic detriment. (21) "Elderly victim" means an individual 60 years old or older who is a victim. (22) "Fraudulent claim" means a filed reparations based on material misrepresentation of fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds for which the claimant is not eligible. (23) "Fund" means the Crime Victim Reparations Fund created in Section 67-5d-523. (24) "Law enforcement officer" means a law enforcement officer as defined in Section 53-13-103. (25) "Medical examination" means a physical examination necessary to document criminally injurious conduct but does not include mental health evaluations for the prosecution and investigation of a crime. (26) "Mental health counseling" means outpatient and inpatient counseling necessitated as a result of criminally injurious conduct, is subject to rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. (27) "Misconduct" as provided in Subsection 67-5d-309(1)(b) means conduct by the victim which was attributable to the injury or death of the victim as provided by rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. (28) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this part. (29) "Offender" means an individual who has violated the Utah Criminal Code through criminally injurious conduct regardless of whether the individual is arrested, prosecuted, or convicted. (30) "Offense" means a violation of the Utah Criminal Code. (31) "Office" means the the Utah Office for Victims of Crime created in Section 67-5d-302. (32) "Officers and employees" means any person performing services for two or more public agencies as agreed in a memorandum of understanding in accordance with

Section 67-5d-503.

- (33) "Pecuniary loss" does not include loss attributable to pain and suffering except as otherwise provided in this part.
- (34) "Perpetrator" means the individual who actually participated in the criminally injurious conduct.
- (35) "Public agency" means a municipality, a county, the division, the Office of the Attorney General, the Division of Child and Family Services, the Division of Juvenile Justice Services, the Department of Corrections, the juvenile court, or the Administrative Office of the Courts.
- (36) "Reparations award" means money or other benefits provided to a claimant or to another on behalf of a claimant after the day on which a reparations claim is approved by the office.
- (37) "Reparations claim" means a claimant's request or application made to the office for a reparations award.
- (38) "Reparations officer" means an individual employed by the office to investigate claims of victims and award reparations under this part, and includes the director when the director is acting as a reparations officer.
- (39) "Replacement service loss" means expenses reasonably and necessarily incurred in obtaining ordinary and necessary services in lieu of those the injured individual would have performed, not for income but the benefit of the injured individual or the injured individual's dependents if the injured individual had not been injured.
- (40) "Representative" means the victim, immediate family member, legal guardian, attorney, conservator, executor, or an heir of an individual but does not include a service provider or collateral source.
- (41) "Restitution" means money or services an appropriate authority orders an offender to pay or render to a victim of the offender's conduct.
- (42) "Satellite office" means a child-friendly facility supervised by a Children's Justice Center established in accordance with Section 67-5d-501.
- (43) "Secondary victim" means an individual who is traumatically affected by the criminally injurious conduct subject to rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(44) "Serious bodily injury" means the same as that term is defined in Section 76-1-601. (45) "Service provider" means an individual or agency who provides a service to crime victims for a monetary fee except attorneys as provided in Section 67-5d-321. (46) "Substantial bodily injury" means the same as that term is defined in Section 76-1-601. (47) (a) "Victim" means an individual who suffers bodily or psychological injury or death as a direct result of criminally injurious conduct or of the production of pornography in violation of Section 76-5b-201 if the individual is a minor. (b) "Victim" does not include an individual who participated in or observed the judicial proceedings against an offender unless otherwise provided by statute or rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. (c) "Victim" includes a resident of this state who is injured or killed by an act of terrorism, as defined in 18 U.S.C. Sec. 2331, committed outside of the United States. (48) (a) "Volunteer" means any individual who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the supervising agency. (b) "Volunteer" does not include an individual participating in human subjects research or a court-ordered compensatory service worker as defined in Section 67-20-2. (49) "Work loss" means loss of income from work the injured victim would have performed if the injured victim had not been injured and expenses reasonably incurred by the injured victim in obtaining services in lieu of those the injured victim would have performed for income, reduced by any income from substitute work the injured victim was capable of performing but unreasonably failed to undertake. Section 22. Section 67-5d-103 is enacted to read: <u>67-5d-103.</u> Division creation and responsibilities. (1) There is created the "Division of Victim Services" within the Office of the **Attorney General.** (2) The division shall: (a) provide domestic violence services and shelters, in accordance with federal law, to families and children;

(b) provide protective services to victims of domestic violence, as defined in
Section 77-36-1, and their children, in accordance with the provisions of this chapter and
Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings;
(c) provide services for minors who are victims of human trafficking or human
smuggling as described in Sections 76-5-308 through 76-5-310 or who have engaged in
prostitution or sexual solicitation as defined in Sections 76-10-1302 and 76-10-1313;
(d) cooperate with the federal government in the administration of grants and
programs pertaining to domestic violence and victim services;
(e) establish standards for a direct or contract provider of domestic violence
services;
(f) within appropriations from the Legislature, provide or contract for a variety
of domestic violence services and treatment methods; and
(g) establish rules under Title 63G, Chapter 3, Utah Administrative Rulemaking
Act, in accordance with the requirements of this title and Title 78A, Chapter 6, Juvenile
Court Act, regarding domestic violence services.
Section 23. Section 67-5d-104 is enacted to read:
67-5d-104. Division director.
(1) The division director shall:
(a) be appointed by the attorney general in consultation with the council;
(b) serve at the pleasure of the attorney general;
(c) be an experienced administrator with a background in at least one of the
following fields:
(i) social work;
(ii) psychology;
(iii) criminal justice; or
(iv) law;
(d) demonstrate an understanding of the needs of crime victims and of services to
victims; and
(e) have at least five years of experience working in criminal justice or victim
services.
(2) The division director shall:

- (a) administer and supervise the division;
- (b) coordinate policies and programs, and activities conducted through the board, council, and office;
 - (c) approve the proposed budget of the board, council, and office; and
- (d) administer the Children's Justice Center Program created in Title 67, Chapter 5d, Part 3, Children's Justice Center Program.

Section 24. Section 67-5d-201, which is renumbered from Section 63M-7-601 is renumbered and amended to read:

Part 2. Utah Council on Victims of Crime

[63M-7-601]. <u>67-5d-201.</u> <u>Creation</u>} <u>63M-7-601.</u> <u>Creation</u> -- Members -- Chair.

- (1) There is created within the {[] governor's office{] division} the Utah Council on Victims of Crime.
- (2) The [Utah Council on Victims of Crime] council shall be composed of 25 voting members as follows:
- (a) a representative of the Commission on Criminal and Juvenile Justice appointed by the executive director;
- (b) a representative of the Department of Corrections appointed by the executive director;
 - (c) a representative of the Board of Pardons and Parole appointed by the chair;
 - (d) a representative of the Department of Public Safety appointed by the commissioner;
- (e) a representative of the Division of Juvenile Justice Services appointed by the director;
 - (f) a representative of the Utah Office for Victims of Crime appointed by the director;
- (g) a representative {{} of the Office of the Attorney General appointed by the attorney general {{} of the governor's office appointed by the governor};
- (h) a representative of the United States Attorney for the district of Utah appointed by the United States Attorney;
- (i) a representative of Utah's Native American community appointed by the director of the Division of Indian Affairs after input from federally recognized tribes in Utah;
 - (i) a professional or volunteer working in the area of violence against women and

families appointed by the governor;]

- (j) a representative of the Department of Health's Violence and Injury Prevention

 Program appointed by the program's manager;
 - (k) the chair of each judicial district's victims' rights committee;
 - (1) the following members appointed to serve four-year terms:
- [(i)] (1) a representative of the Statewide Association of Public Attorneys appointed by that association;
- [(ii)] (m) a representative of the Utah Chiefs of Police Association appointed by the president of that association;
- [(iii)] (n) a representative of the Utah Sheriffs' Association appointed by the president of that association;
- [(iv)] (o) a representative of a Children's Justice Center appointed by the attorney general; and
 - [(v) a citizen representative appointed by the governor; and]
- $[\frac{m}]$ (p) the following members appointed by the members in Subsections (2)(a) through (2)[$\frac{k}{p}$ 0) to serve four-year terms:
 - (i) an individual who works professionally with victims of crime; [and]
 - (ii) a victim of crime.
 - [(3) The council shall annually elect one member to serve as chair.]
 - (ii) a citizen representative; and
 - (iii) a citizen representative who has been a victim of crime.
 - (3) The council shall annually elect:
 - (a) one member to serve as chair;
 - (b) one member to serve as vice-chair; and
 - (c) one member to serve as treasurer.
- {(4) The council shall work with the division director to coordinate services and initiatives.
- Section 25. Section 67-5d-202, which is renumbered from Section 63M-7-602 is renumbered and Section 2. Section 63M-7-602 is amended to read:
 - {|}63M-7-602{|}. { 67-5d-202. Reappointment} Reappointment -- Vacancies.
 - (1) [Members] A member appointed to serve a four-year [terms shall be] term is

eligible for reappointment [one time].

(2) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the <u>remainder of the</u> unexpired term.

Section {26. Section 67-5d-203, which is renumbered from Section 63M-7-603 is renumbered and}3. Section 63M-7-603 is amended to read:

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\{\}\}63M-7-603\{\}\}. \{67-5d-203. Duties\}Duties of the council.
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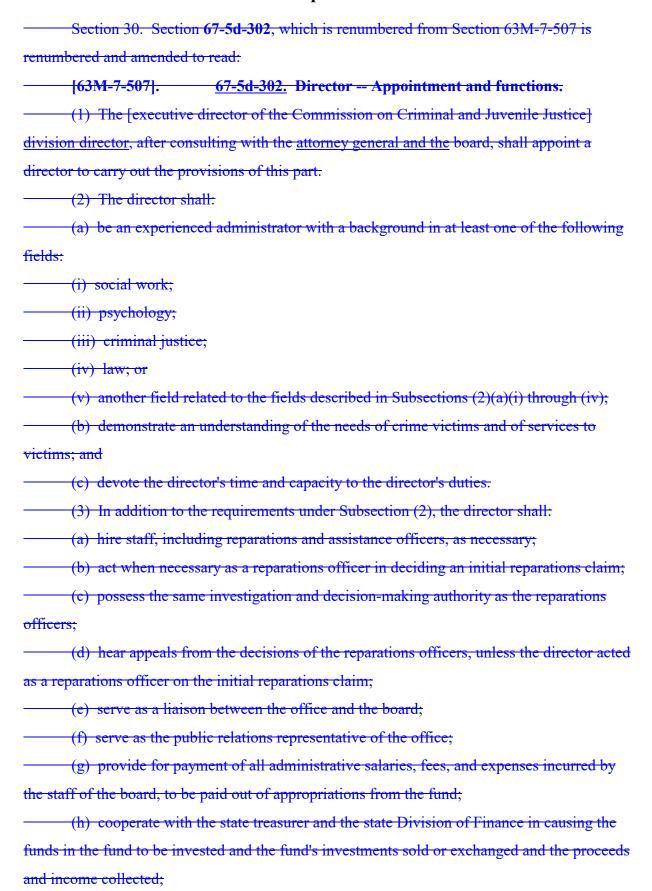
- (1) The council shall:
- (a) make recommendations to the Legislature, the {{}}governor{{}} attorney general}, and the Judicial Council on the following:
 - (i) enforcing existing rights of victims of crime;
 - (ii) enhancing rights of victims of crime;
 - (iii) the role of victims of crime in the criminal justice system;
 - (iv) victim restitution;
- (v) educating and training criminal justice professionals on the rights of victims of crime; and
 - (vi) enhancing services to victims of crimes;
 - (b) provide training on the rights of victims of crime; and
- (c) establish a subcommittee to consider complaints not resolved by the Victims' Rights Committee established in Section 77-37-5.
 - (2) The council:
- (a) shall advocate the adoption, repeal, or modification of laws or proposed legislation in the interest of victims of crime;
- { (b) may establish additional subcommittees to assist in accomplishing its duties; [and]
- (c) shall select and appoint persons [pursuant to the provisions of] in accordance with Section 77-37-5 to act as chairpersons of the judicial district victims' rights committees and provide assistance to the committees in their operations[.]; and

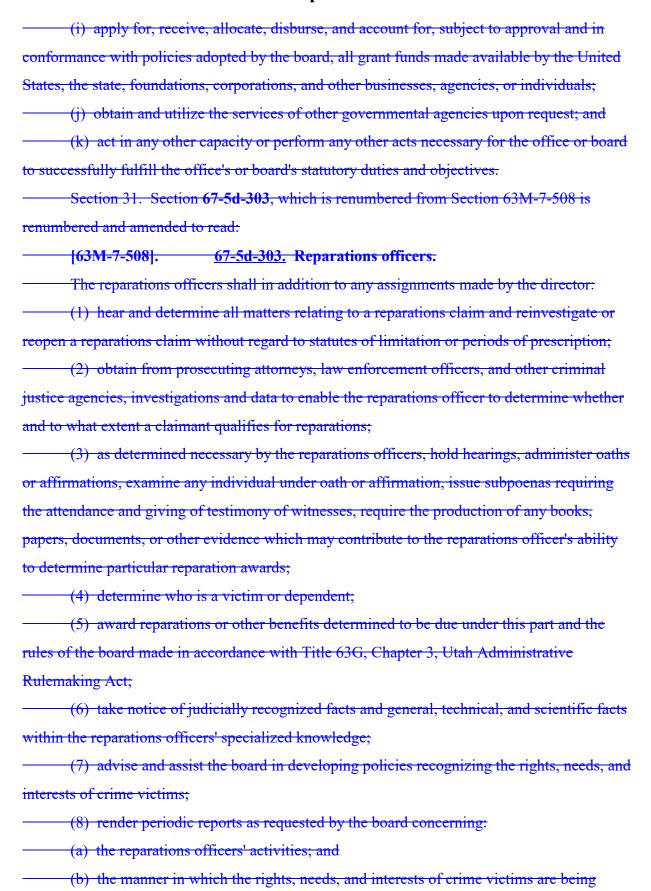
Section 27. Section 67-5d-204, which is renumbered from Section 63M-7-604 is renumbered and amended to read:

[63M-7-604]. <u>67-5d-204. Member expenses.</u>

A member of the council may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with: (1) Section 63A-3-106; (2) Section 63A-3-107; and (3) rules made by the Division of Finance [pursuant to] a victim of crime; [(b)] (c) may establish additional subcommittees to assist in accomplishing its duties; <u>and</u> [(c)] (d) shall select and appoint [persons pursuant to the provisions of] individuals in accordance with {Sections 63A-3-106 and 63A-3-107. Section 28. Section 67-5d-205, which is renumbered from Section 63M-7-605 is renumbered and Section 77-37-5 to act as chairpersons of the judicial district victims' rights committees and provide assistance to the committees in their operations. Section 4. Section 63M-7-605 is amended to read: $\{\}\}$ 63M-7-605 $\{\}\}$. $\{\}$ 67-5d-205. Staffing \)Staffing. (1) The \{\}Commission on Criminal and Juvenile Justice \{\} division\} shall provide staff to the council and any subcommittees established by the council. (2) Staff assigned to the council shall: (a) provide administrative assistance to the council and {the council's committees and any subcommittees; (b) receive complaints regarding victim's rights violations from victims and other interested persons and forward the complaints to the appropriate {committee} subcommittee within the council; and (c) perform any duties assigned by the council or a subcommittee to fulfill the council's duties described in Section 67-5d-203. Section 29. Section 67-5d-301 is enacted to read: Part 3. Utah Office for Victims of Crime <u>67-5d-301.</u> Office creation and placement within the division. (1) There is created the Utah Office for Victims of Crime in the division. (2) The director may request assistance from the division, the board, the Office of the Attorney General, the Department of Public Safety, or any other state agency in conducting

research or monitoring programs under this part.

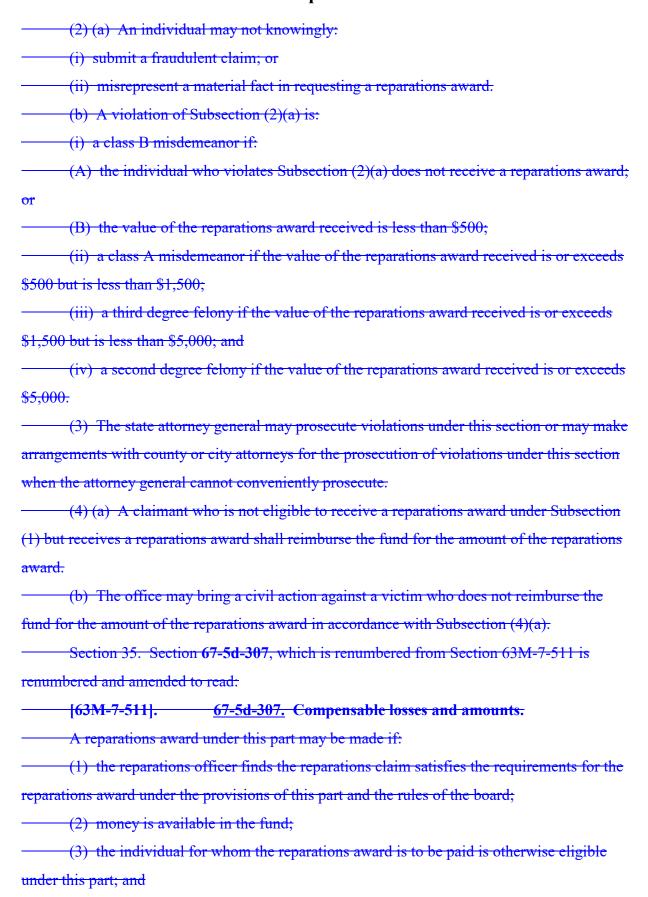


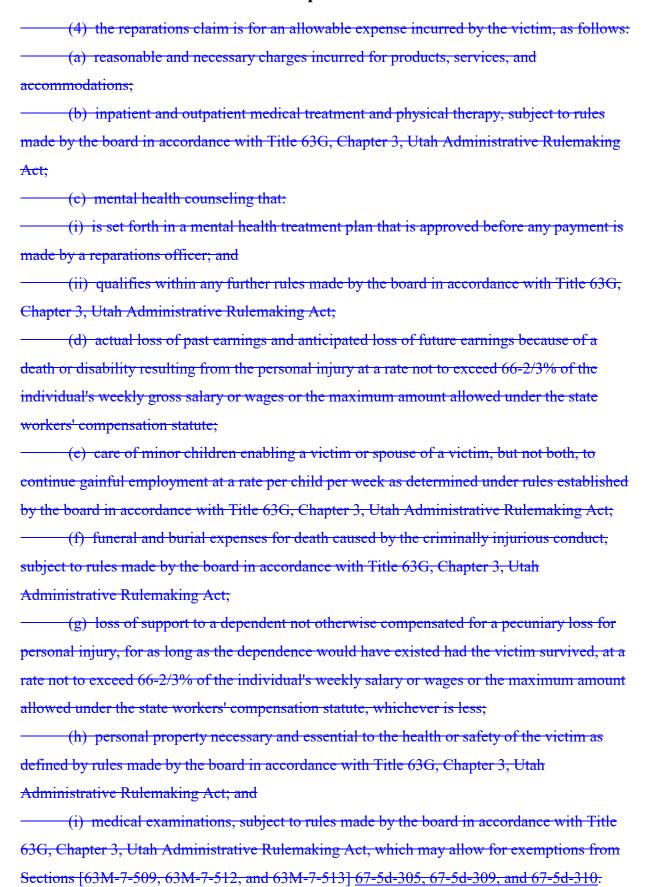


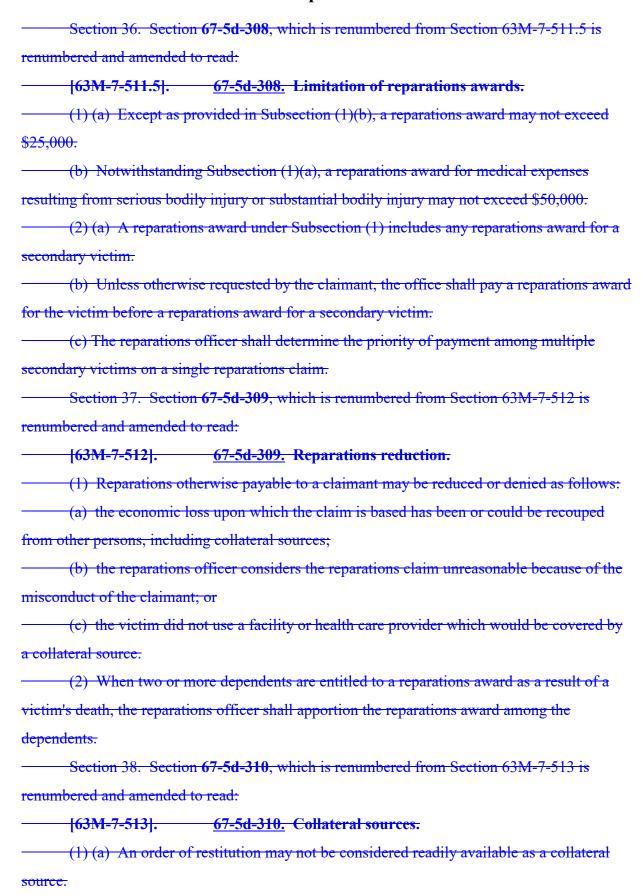
addressed by the state's criminal justice system; (9) establish priorities for assisting elderly victims of crime or those victims facing extraordinary hardships; (10) cooperate with the State Commission on Criminal and Juvenile Justice to develop information regarding crime victims' problems and programs; and (11) assist the director in publicizing the provisions of the office, including the procedures for obtaining reparation, and in encouraging law enforcement agencies, health providers, and other related officials to take reasonable care to ensure that victims are informed about the provisions of this part and the procedure for applying for reparation. Section 32. Section 67-5d-304, which is renumbered from Section 63M-7-503 is renumbered and amended to read: [63M-7-503]. <u>67-5d-304.</u> Restitution -- Reparations not to supplant restitution -- Assignment of claim for restitution judgment to reparations office. (1) A reparations award may not supplant restitution as established under Title 77, Chapter 38a, Crime Victims Restitution Act, or as established by any other provisions. (2) The court may not reduce an order of restitution based on a reparations award. (3) (a) (i) If, due to reparation payments to a victim, the office is assigned under Section [63M-7-519] 67-5d-316 a claim for the victim's judgment for restitution or a portion of the restitution, the office may file with the sentencing court a notice of restitution listing the amounts or estimated future amounts of payments made or anticipated to be made to or on behalf of the victim. (ii) The office may provide a restitution notice to the victim or victim's representative before or at sentencing. (iii) The office's failure to provide notice under Subsection (3)(a) does not invalidate the imposition of the judgment or order of restitution if the defendant is given the opportunity to object and be heard as provided in this part. (b) (i) Any objection by the defendant to the imposition or amount of restitution shall be made at the time of sentencing or in writing within 20 days after the day on which the defendant receives the notice described in Subsection (3)(a), to be filed with the court and a copy mailed to the office. (ii) Upon the filing of the objection, the court shall allow the defendant a full hearing

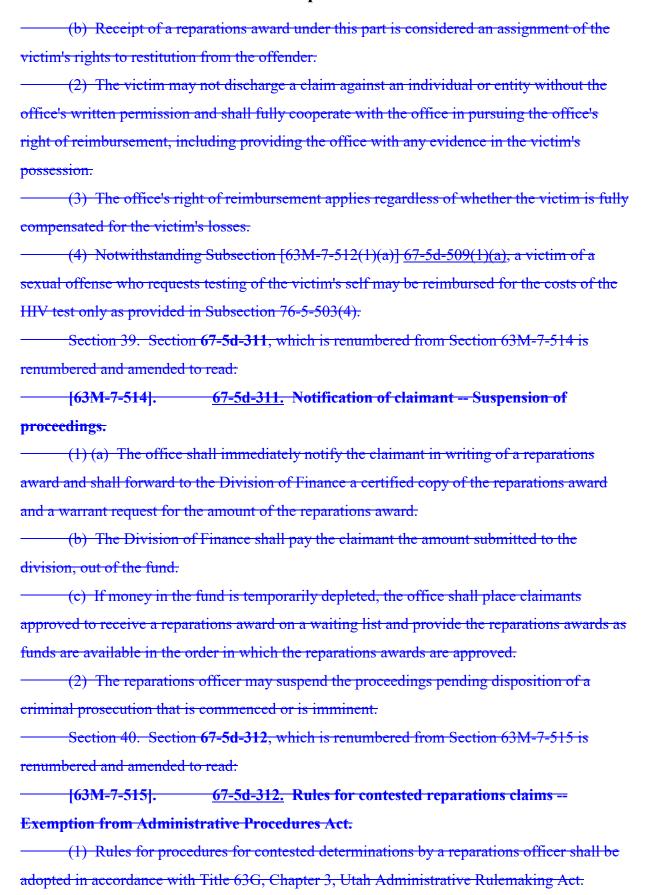
on the issue in accordance with Subsection 77-38a-302(4). (iii) The amount of restitution sought by the office may be updated at any time, subject to the right of the defendant to object. (4) If no objection is made or filed by the defendant under Subsection (3), then upon conviction and sentencing, the court shall enter a judgment for complete restitution under Subsections 76-3-201(4)(c) and (d) and identify the office as the assignee of the assigned portion of the judgment and order of restitution. (5) If the notice of restitution is filed after sentencing but during the term of probation or parole, the court or Board of Pardons shall modify any existing civil judgment and order of restitution to include expenses paid by the office on behalf of the victim and identify the office as the assignee of the assigned portion of the judgment and order of restitution. If no judgment or order of restitution has been entered, the court shall enter a judgment for complete restitution and court-ordered restitution under Sections 77-38a-302 and 77-38a-401. Section 33. Section 67-5d-305, which is renumbered from Section 63M-7-509 is renumbered and amended to read: [63M-7-509]. 67-5d-305. Grounds for eligibility. (1) A victim is eligible for a reparations award under this part if: (a) the claimant is: (i) a victim of criminally injurious conduct; (ii) a dependent of a deceased victim of criminally injurious conduct; or (iii) a representative acting on behalf of one of the above; (b) (i) the criminally injurious conduct occurred in Utah; or (ii) the victim is a Utah resident who suffers injury or death as a result of criminally injurious conduct inflicted in a state, territory, or country that does not provide a crime victims' compensation program; (c) the application is made in writing in a form that conforms substantially to that prescribed by the board; (d) the criminally injurious conduct is reported to a law enforcement officer, in the law enforcement officer's capacity as a law enforcement officer, or another federal or state investigative agency; (e) the claimant or victim cooperates with the appropriate law enforcement agencies

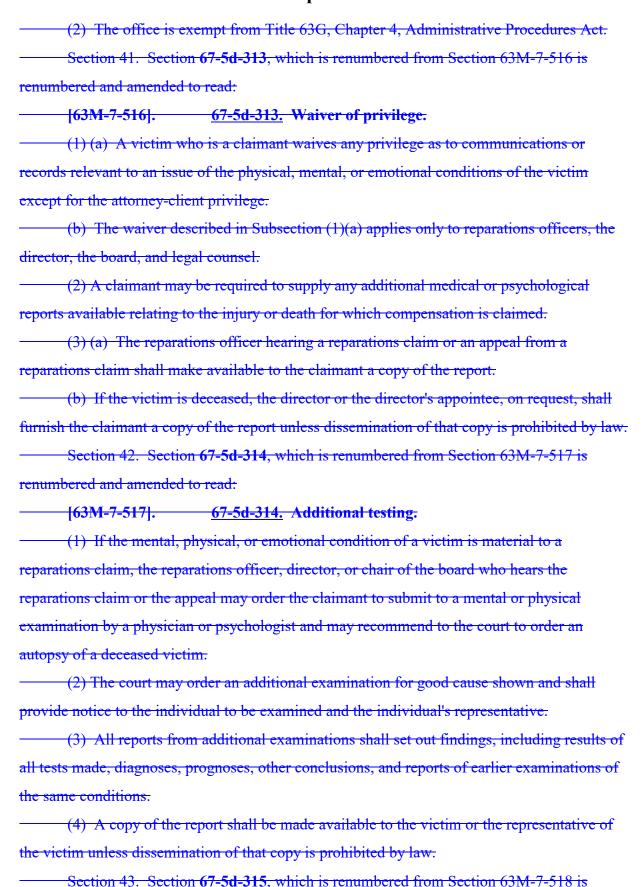
and prosecuting attorneys in efforts to apprehend or convict the perpetrator of the alleged offense; and (f) the criminally injurious conduct occurred after December 31, 1986. (2) A reparations award may be made to a victim regardless of whether any individual is arrested, prosecuted, or convicted of the criminally injurious conduct giving rise to a reparations claim. Section 34. Section 67-5d-306, which is renumbered from Section 63M-7-510 is renumbered and amended to read: [63M-7-510]. 67-5d-306. Ineligible individuals -- Fraudulent reparations claims -- Penalties. (1) The following individuals are not eligible to receive a reparations award: (a) an individual who does not meet all of the provisions set forth in Section [63M-7-509] 67-5d-305; (b) the offender; (c) an accomplice of the offender; (d) an individual whose receipt of a reparations award would unjustly benefit the offender, accomplice, or another individual reasonably suspected of participating in the offense; (e) the victim of a motor vehicle injury who was the owner or operator of the motor vehicle and was not at the time of the injury in compliance with the state motor vehicle insurance laws; (f) a convicted offender serving a sentence of imprisonment in any prison or jail or residing in any other correctional facility; (g) an individual who is on probation or parole if the circumstances surrounding the offense of which the individual is a victim is a violation of the individual's probation or parole; (h) an individual whose injuries are the result of criminally injurious conduct that occurred in a prison, jail, or another correctional facility while the individual was incarcerated; and (i) an individual who: (i) submits a fraudulent claim; or (ii) misrepresents a material fact in requesting a reparations award.







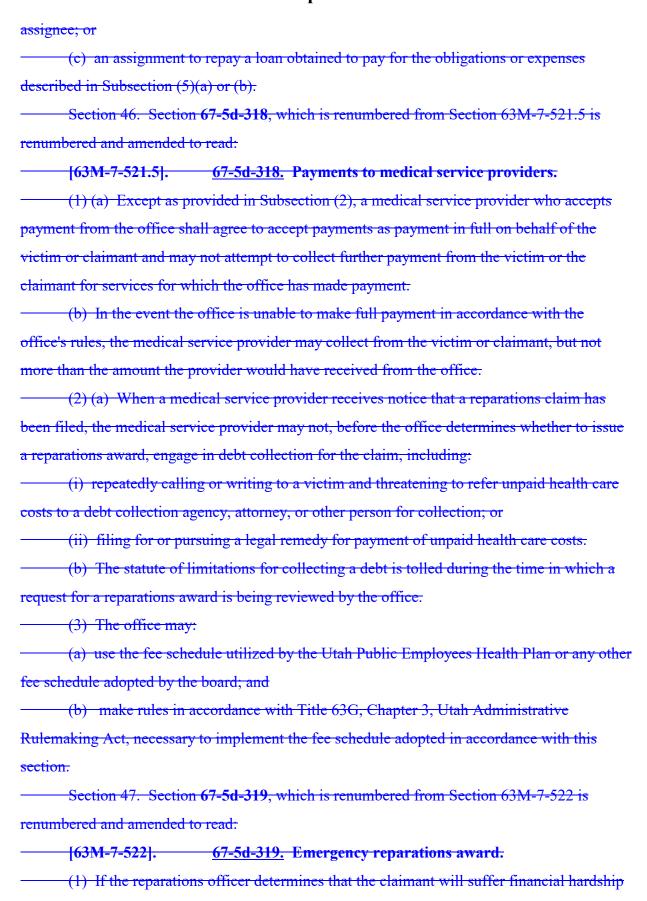




renumbered and amended to read:
[63M-7-518]. <u>67-5d-315.</u> Failure to comply.
If an individual refuses to comply with an order under this part or asserts a privilege,
except privileges arising from the attorney-client relationship, to withhold or suppress evidence
relevant to a reparations claim, the director or reparations officer may make any appropriate
determination including denial of the reparations claim.
Section 44. Section 67-5d-316, which is renumbered from Section 63M-7-519 is
renumbered and amended to read:
[63M-7-519]. <u>67-5d-316.</u> Assignment of recovery Reimbursement.
(1) (a) By accepting a reparations award, the victim:
(i) automatically assigns to the office any claim the victim may have relating to
criminally injurious conduct in the reparations claim; and
(ii) is required to reimburse the office if the victim recovers any money relating to the
criminally injurious conduct.
(b) The office's right of assignment and reimbursement under Subsection (1)(a) is
limited to the lesser of:
(i) the amount paid by the office; or
(ii) the amount recovered by the victim from the third party.
(c) The office may be reimbursed under Subsection (1)(a) regardless of whether the
office exercises the office's right of assignment under Subsection (1)(a).
(2) The board, with the concurrence of the director, may reduce the office's right of
reimbursement if the board determines that:
(a) the reduction will benefit the fund; or
(b) the victim has ongoing expenses related to the offense upon which the reparations
claim is based and the benefit to the victim of reducing the office's right of reimbursement
exceeds the benefit to the office of receiving full reimbursement.
(3) The office reserves the right to make a claim for reimbursement on behalf of the
victim and the victim may not impair the office's claim or the office's right of reimbursement.
Section 45. Section 67-5d-317, which is renumbered from Section 63M-7-521 is
renumbered and amended to read:
[63M-7-521]. 67-5d-317. Reparations award Payment methods Claims

against the award.

- (1) (a) Except as provided in Subsection (1)(b), a reparations officer may provide for the payment of a reparations award in a lump sum or in installments.
- (b) (i) The reparations officer shall pay the part of a reparations award equal to the amount of economic loss accrued to the date of the reparations award in a lump sum.
- (ii) A reparations officer may not pay allowable expense that would accrue after an initial reparations award is made in a lump sum.
- (iii) Except as provided in Subsection (2), a reparations officer shall award the part of a reparations award that may not be paid in a lump sum under this Subsection (1)(b) in installments.
- (2) At the request of the claimant, the reparations officer may convert future economic loss installment payments, other than allowable expense, to a lump sum payment, discounted to present value, but only upon a finding by the reparations officer that the reparations award in a lump sum will promote the interests of the claimant.
- (3) (a) A reparations award for future economic loss payable in installments may be made only for a period for which the reparations officer can reasonably determine future economic loss.
- (b) The reparations officer may reconsider and modify a reparations award for future economic loss payable in installments, upon the reparations officer's finding that a material and substantial change of circumstances has occurred.
- (4) A reparations award is not subject to execution, attachment, or garnishment, except that a reparations award for allowable expense is not exempt from a claim of a creditor to the extent that the creditor provided products, services, or accommodations, the costs of which are included in the reparations award.
- (5) An assignment or agreement to assign a reparations award for loss accruing in the future is unenforceable, except:
- (a) an assignment of a reparations award of reparations for work loss to secure payment of alimony, maintenance, or child support;
- (b) an assignment of a reparations award for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the reparations claim is based and are provided or to be provided by the



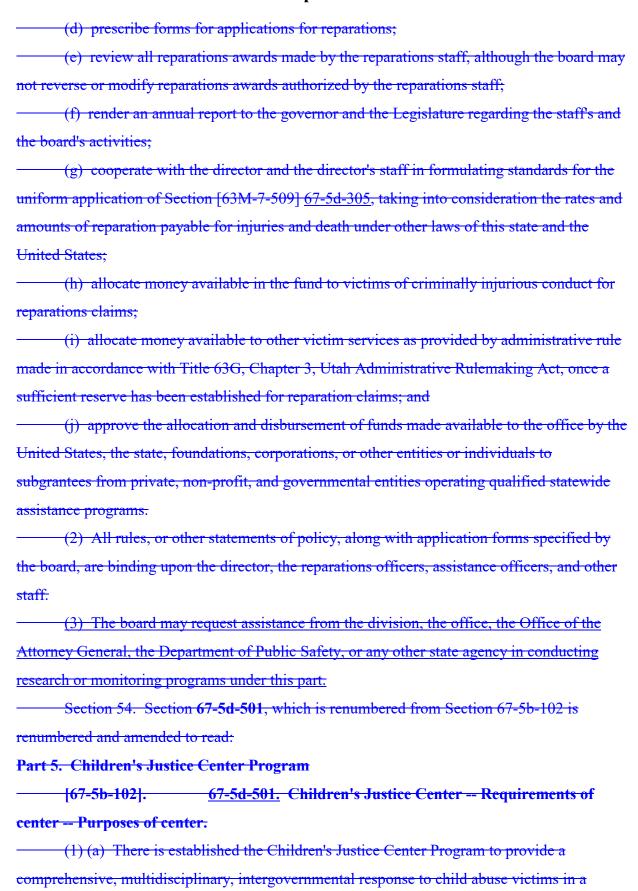
unless an emergency reparations award is made, and it appears likely that a final reparations award will be made, an amount may be paid to the claimant, to be deducted from the final reparations award or repaid by and recoverable from the claimant to the extent that it exceeds the final reparations award. (2) The board may limit emergency reparations awards under Subsection (1) to any amount the board considers necessary. Section 48. Section 67-5d-320, which is renumbered from Section 63M-7-523 is renumbered and amended to read: [63M-7-523]. <u>67-5d-320.</u> Review of reparations award decision. (1) The reparations officer shall review at least annually every reparations award being paid in installments. (2) An order on review of a reparations award does not require refund of amounts previously paid unless the reparations award was obtained by fraud or a material mistake of fact. Section 49. Section 67-5d-321, which is renumbered from Section 63M-7-524 is renumbered and amended to read: | 63M-7-524|. <u>67-5d-321.</u> Attorney fees. (1) The claims procedures shall be sufficiently simple that the assistance of an attorney is unnecessary, and no attorney fees may be paid for the assistance of an attorney or any other representative in filing the reparations claim or providing information to the reparations officer. (2) Attorney fees may be granted in the following circumstances and shall be paid out of the reparations award not to exceed 15% of the amount of the reparations award: (a) when a reparations award is denied and, after a hearing, the decision to deny is overturned; or (b) when minor dependents of a deceased victim require assistance in establishing a trust or determining a guardian. (3) (a) An attorney or any other person providing assistance in a reparations claim, who contracts for or receives sums not allowed under this part, is guilty of a class B misdemeanor. (b) This Subsection (3) does not apply to attorneys who assist the victim in filing a civil action against the perpetrator. Section 50. Section 67-5d-322, which is renumbered from Section 63M-7-525 is

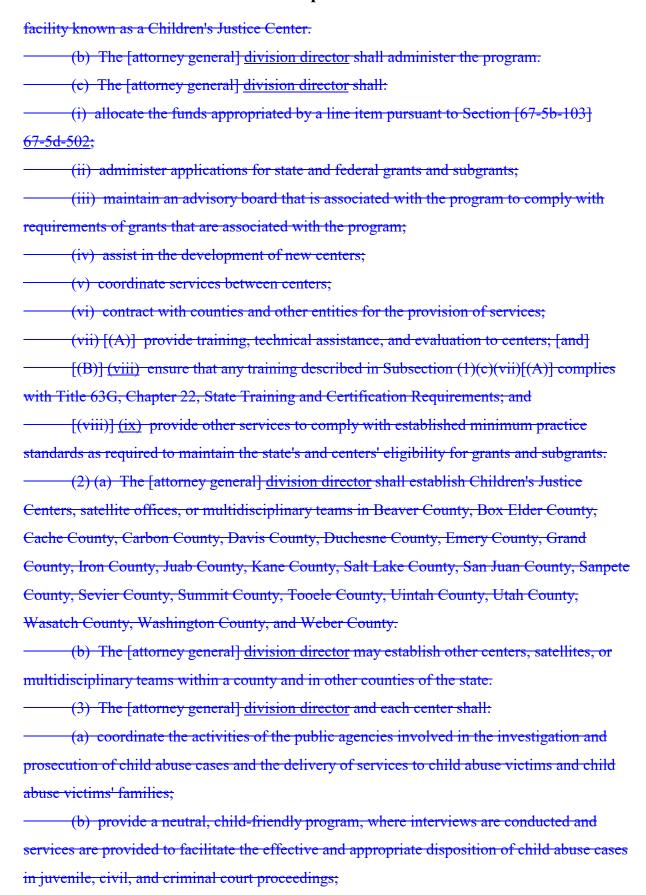
renumbered and amended to read: [63M-7-525]. 67-5d-322. Purpose -- Not entitlement program. (1) (a) The purpose of the office is to assist victims of criminally injurious conduct who may be eligible for assistance from the fund. (b) Reparation to a victim under this part is limited to the money available in the fund. (2) (a) The assistance program described in Subsection (1) is not an entitlement program. (b) A reparations award may be limited or denied as determined appropriate by the board. (c) Failure to grant a reparations award does not create a cause of action against the office, the state, or any of its subdivisions and there is no right to judicial review over the decision whether or not to grant a reparations award. (3) A cause of action based on a failure to give or receive the notice required by this part does not accrue to any person against the state, any of its agencies or local subdivisions, any of their law enforcement officers or other agents or employees, or any health care or medical provider or its agents or employees nor does it affect or alter any requirement for filing or payment of a reparations claim. Section 51. Section 67-5d-323, which is renumbered from Section 63M-7-526 is renumbered and amended to read: [63M-7-526]. <u>67-5d-323.</u> Crime Victims Reparations Fund. (1) (a) There is created an expendable special revenue fund known as the "Crime Victim Reparations Fund" to be administered and distributed as provided in this section by the office in cooperation with the Division of Finance. (b) The fund shall consist of: (i) appropriations by the Legislature; and (ii) funds collected under Subsections (2) and (3). (c) Money deposited in this fund is for victim reparations, other victim services, and, as appropriated, for administrative costs of the office. (2) (a) A percentage of the income earned by inmates working for correctional industries in a federally certified private sector/prison industries enhancement program shall be deposited in the fund.

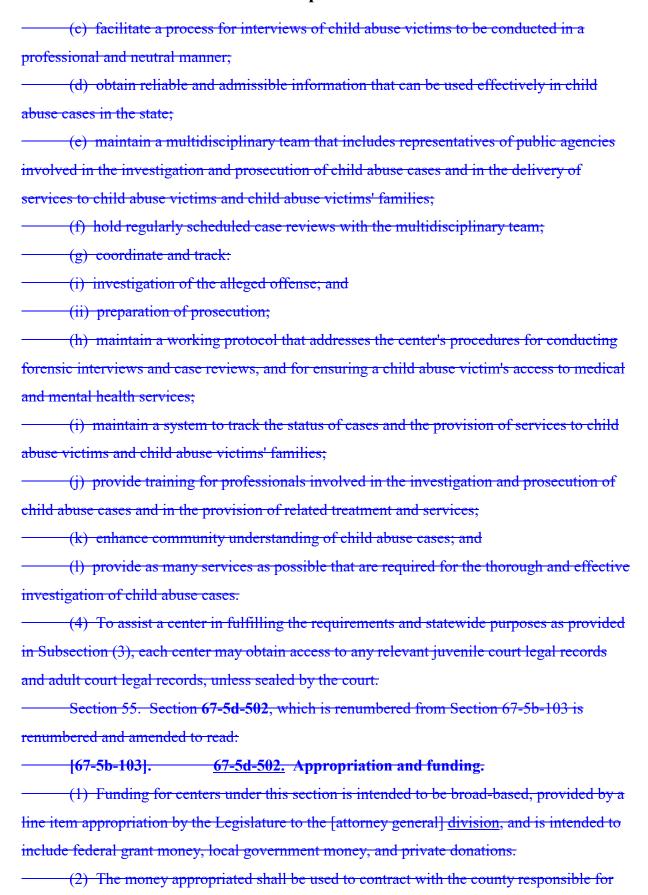
(b) The percentage of income deducted from inmate pay under Subsection (2)(a) shall
be determined by the executive director of the Department of Corrections in accordance with
the requirements of the private sector/prison industries enhancement program.
(3) (a) Judges are encouraged to, and may in their discretion, impose additional
reparations to be paid into the fund by convicted criminals.
(b) The additional discretionary reparations may not exceed the statutory maximum
fine permitted by Title 76, Utah Criminal Code, for that offense.
Section 52. Section 67-5d-401, which is renumbered from Section 63M-7-504 is
renumbered and amended to read:
Part 4. Crime Victim Reparations Assistance Board
[63M-7-504]. <u>67-5d-401.</u> Crime Victim Reparations and Assistance Board
Members.
(1) (a) A Crime Victim Reparations and Assistance Board is created in the division,
consisting of seven members appointed by [the governor with the advice and consent of the
Senate in accordance with Title 63G, Chapter 24, Part 2, Vacancies] the attorney general in
consultation with the division director.
(b) The membership of the board shall consist of:
(i) a member of the bar of this state;
(ii) a victim of criminally injurious conduct;
(iii) a licensed physician;
(iv) a representative of law enforcement;
(v) a mental health care provider;
(vi) a victim advocate; and
(vii) a private citizen.
(c) The [governor] attorney general may appoint a chair of the board who shall serve
for a period of time prescribed by the governor, not to exceed the length of the chair's term.
The board may elect a vice chair to serve in the absence of the chair.
(d) The board may hear appeals from administrative decisions as provided in rules
adopted pursuant to Section [63M-7-515] 67-5d-312.
(2) (a) Except as required by Subsection (2)(b), as terms of current board members
expire, the [governor] attorney general shall appoint each new member or reappointed member

to a four-year term. (b) Notwithstanding the requirements of Subsection (2)(a), the [governor] attorney general shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years. (c) A member may be reappointed to one successive term in addition to a member's initial full-term appointment. (3) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term. (b) A member resigning from the board shall serve until the member's successor is appointed and qualified. (4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with: (a) Section 63A-3-106; (b) Section 63A-3-107; and (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107. (5) The board shall meet at least once quarterly but may meet more frequently as necessary. (6) A member shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest. Section 53. Section 67-5d-402, which is renumbered from Section 63M-7-506 is renumbered and amended to read: [63M-7-506]. 67-5d-402. Functions of board. (1) The board shall: (a) adopt a description of the office and prescribe the general operation of the board; (b) prescribe policy for the office; (c) adopt rules to implement and administer this part in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which may include setting of ceilings on reparations, defining of terms not specifically stated in this part, and establishing of rules

governing attorney fees;

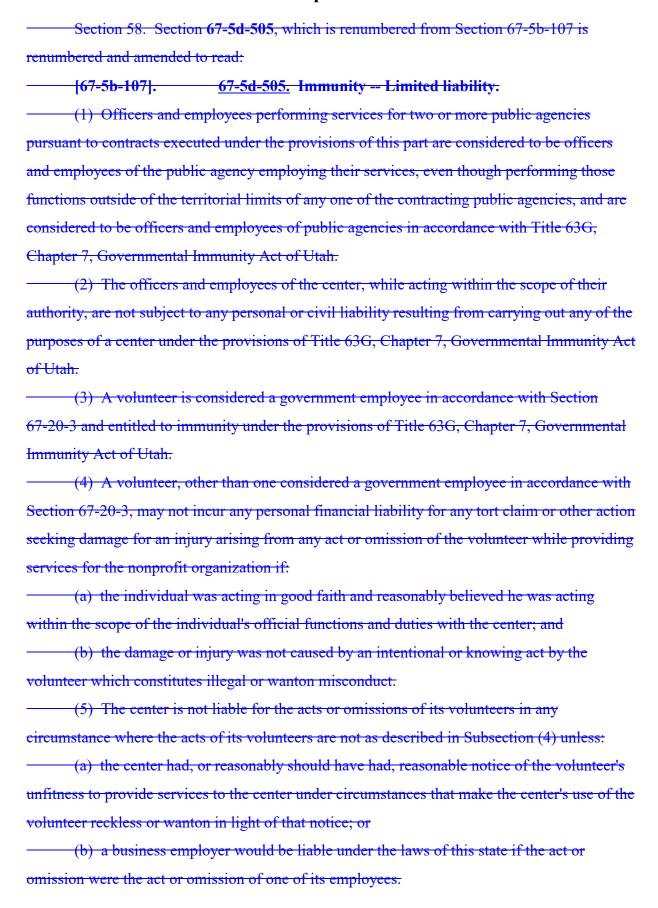


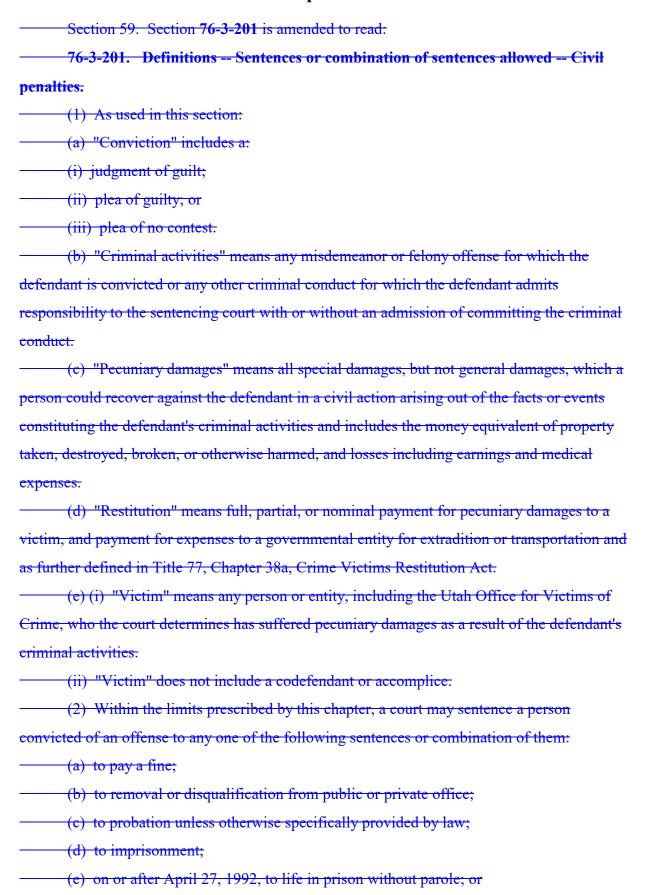


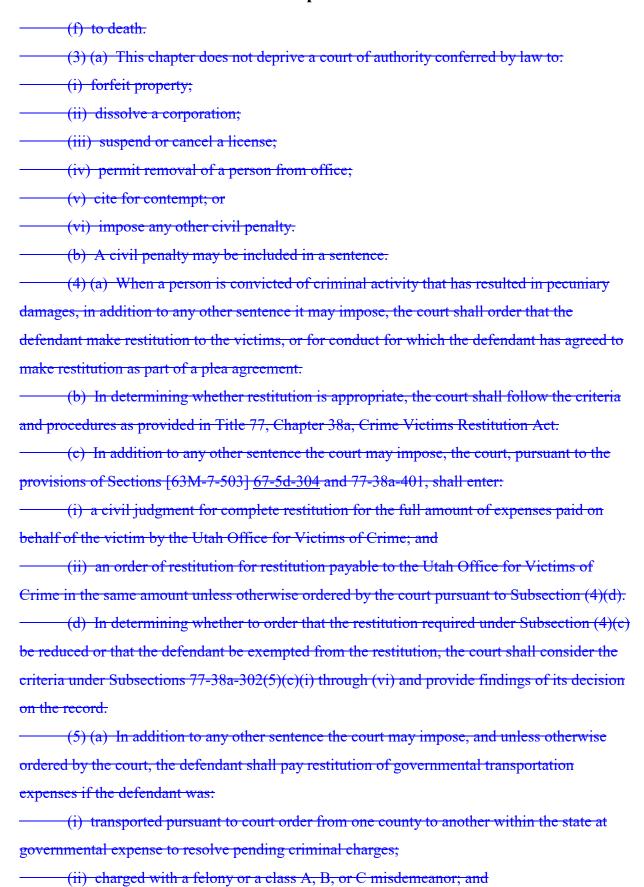


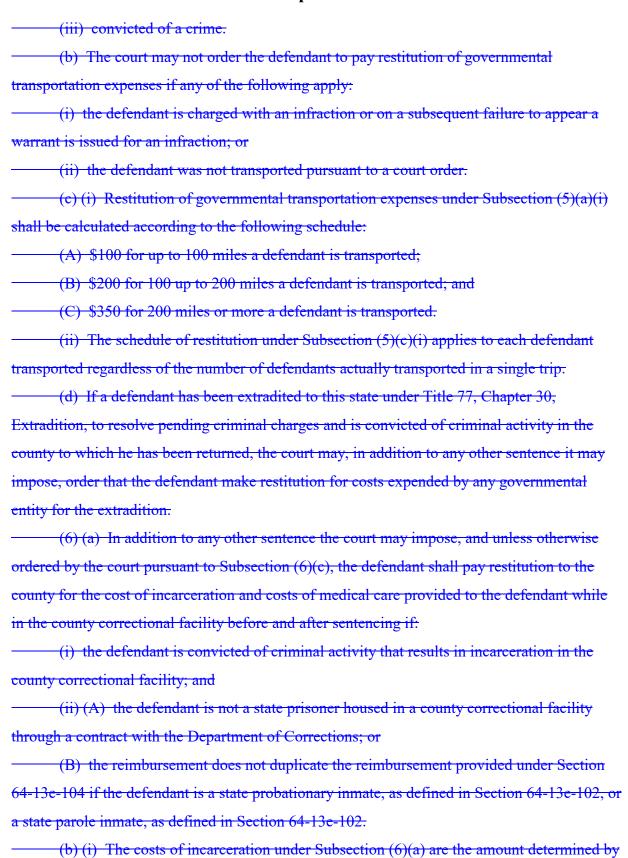
the operation and accountability of a center in accordance with Section [67-5b-102] 67-5d-501. (3) The money appropriated may be used by the program to provide resources and contract as needed to support the development of the program and the implementation of evidence-based practices and requirements. Section 56. Section 67-5d-503, which is renumbered from Section 67-5b-104 is renumbered and amended to read: [67-5b-104]. 67-5d-503. Requirements of a memorandum of understanding. (1) Before a center may be established, a memorandum of understanding regarding participation in operation of the center shall be executed among: (a) the contracting county designated to oversee the operation and accountability of the center, including the budget, costs, personnel, and management pursuant to Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local **Entities Act**; (b) the [Office of the Attorney General] division; (c) at least one representative of a county or municipal law enforcement agency that investigates child abuse in the area to be served by the center; (d) the division of Child and Family Services; (e) the county or district attorney who routinely prosecutes child abuse cases in the area to be served by the center; and (f) at least one representative of any other governmental entity that participates in child abuse investigations or offers services to child abuse victims that desires to participate in the operation of the center. (2) A memorandum of understanding executed under this section shall include the agreement of each public agency, or its representative, described in Subsection (1) to cooperate in: (a) developing a comprehensive and cooperative multidisciplinary team approach to investigating child abuse; (b) reducing, to the greatest extent possible, the number of interviews required of a victim of child abuse to minimize the negative impact of the investigation on the child; and (c) developing, maintaining, and supporting, through the center, an environment that

emphasizes the best interests of children. Section 57. Section 67-5d-504, which is renumbered from Section 67-5b-105 is renumbered and amended to read: [67-5b-105]. <u>67-5d-504.</u> Local advisory boards -- Membership. (1) The cooperating public agencies and other persons shall make up each center's local advisory board, which shall be composed of the following people from the county or area: (a) the local center director or the director's designee; (b) a district attorney or county attorney having criminal jurisdiction or any designee; (c) a representative of the attorney general's office, designated by the attorney general; (d) at least one official from a local law enforcement agency or the local law enforcement agency's designee; (e) the county executive or the county executive's designee; (f) a licensed nurse practitioner, physician assistant, or physician; (g) a licensed mental health professional; (h) a criminal defense attorney; (i) at least four members of the community at large; (j) a guardian ad litem or representative of the Office of Guardian Ad Litem, designated by the director; (k) a representative of the Division of Child and Family Services within the Department of Human Services, designated by the employee of the division who has supervisory responsibility for the county served by the center; (1) if a center serves more than one county, one representative from each county served, appointed by the county executive; and (m) additional members appointed as needed by the county executive. (2) The members on each local advisory board who serve due to public office as provided in Subsections (1)(b) through (e) shall select the remaining members. The members on each local advisory board shall select a chair of the local advisory board. (3) The local advisory board may not supersede the authority of the contracting county as designated in Section [67-5b-104] 67-5d-503. (4) Appointees and designees shall serve a term or terms as designated in the bylaws of the local advisory board.









the county correctional facility, but may not exceed the daily inmate incarceration costs and

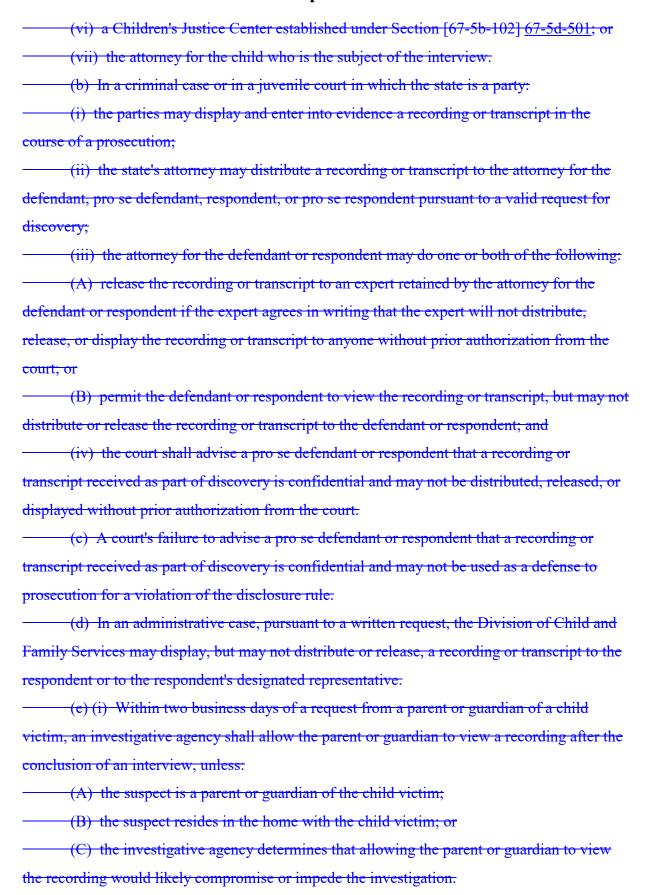
medical and transportation costs for the county correctional facility.

- (ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred by the county correctional facility in providing reasonable accommodation for an inmate qualifying as an individual with a disability as defined and covered by the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental health treatment for the inmate's disability. (c) In determining whether to order that the restitution required under this Subsection (6) be reduced or that the defendant be exempted from the restitution, the court shall consider the criteria under Subsections 77-38a-302(5)(c)(i) through (vi) and shall enter the reason for its order on the record. (d) If on appeal the defendant is found not guilty of the criminal activity under Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall reimburse the defendant for restitution the defendant paid for costs of incarceration under Subsection (6)(a). (7) In addition to any other sentence the court may impose, the court shall determine whether costs are appropriate pursuant to Section 77-32a-107. Section 60. Section 77-37-4 is amended to read: 77-37-4. Additional rights -- Children. In addition to all rights afforded to victims and witnesses under this chapter, child victims and witnesses shall be afforded these rights: (1) Children have the right to protection from physical and emotional abuse during their involvement with the criminal justice process. (2) Children are not responsible for inappropriate behavior adults commit against them and have the right not to be questioned, in any manner, nor to have allegations made, implying this responsibility. Those who interview children have the responsibility to consider the interests of the child in this regard. (3) Child victims and witnesses have the right to have interviews relating to a criminal
- prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they are conducted by persons sensitive to the needs of children.
- (4) Child victims have the right to be informed of available community resources that might assist them and how to gain access to those resources. Law enforcement and prosecutors

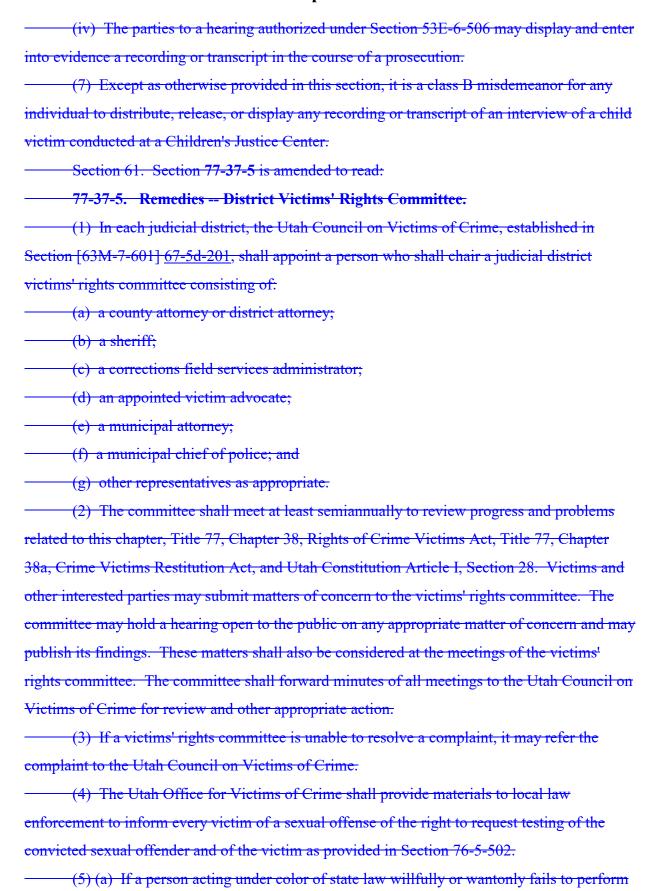
have the duty to ensure that child victims are informed of community resources, including counseling prior to the court proceeding, and have those services available throughout the criminal justice process. (5) (a) Child victims have the right, once an investigation has been initiated by law enforcement or the Division of Child and Family Services, to keep confidential their interviews that are conducted at a Children's Justice Center, including video and audio recordings, and transcripts of those recordings. Except as provided in Subsection (6), recordings and transcripts of interviews may not be distributed, released, or displayed to anyone without a court order. (b) A court order described in Subsection (5)(a): (i) shall describe with particularity to whom the recording or transcript of the interview may be released and prohibit further distribution or viewing by anyone not named in the order; and (ii) may impose restrictions on access to the materials considered reasonable to protect the privacy of the child victim. (c) A parent or guardian of the child victim may petition a juvenile or district court for an order allowing the parent or guardian to view a recording or transcript upon a finding of good cause. The order shall designate the agency that is required to display the recording or transcript to the parent or guardian and shall prohibit viewing by anyone not named in the order. (d) Following the conclusion of any legal proceedings in which the recordings or transcripts are used, the court shall order the recordings and transcripts in the court's file sealed and preserved. (6) (a) The following offices and their designated employees may distribute and receive a recording or transcript to and from one another without a court order: (i) the Division of Child and Family Services; (ii) administrative law judges employed by the Department of Human Services; (iii) Department of Human Services investigators investigating the Division of Child and Family Services or investigators authorized to investigate under Section 62A-4a-202.6;

(v) a law enforcement agency;

(iv) an office of the city attorney, county attorney, district attorney, or attorney general;



(ii) If the investigative agency determines that allowing the parent or guardian to view the recording would likely compromise or impede the investigation, the parent or guardian may petition a juvenile or district court for an expedited hearing on whether there is good cause for the court to enter an order allowing the parent or guardian to view the recording in accordance with Subsection (5)(c). (iii) A Children's Justice Center shall coordinate the viewing of the recording described in this Subsection (6)(e). (f) A multidisciplinary team assembled by a Children's Justice Center or an interdisciplinary team assembled by the Division of Child and Family Services may view a recording or transcript, but may not receive a recording or transcript. (g) A Children's Justice Center: (i) may distribute or display a recording or transcript to an authorized trainer or evaluator for purposes of training or evaluation; and (ii) may display, but may not distribute, a recording or transcript to an authorized trainee. (h) An authorized trainer or instructor may display a recording or transcript according to the terms of the authorized trainer's or instructor's contract with the Children's Justice Center or according to the authorized trainer's or instructor's scope of employment. (i) (i) In an investigation under Section 53E-6-506, in which a child victim who is the subject of the recording or transcript has alleged criminal conduct against an educator, a law enforcement agency may distribute or release the recording or transcript to an investigator operating under State Board of Education authorization, upon the investigator's written request. (ii) If the respondent in a case investigated under Section 53E-6-506 requests a hearing authorized under that section, the investigator operating under State Board of Education authorization may display, release, or distribute the recording or transcript to the prosecutor operating under State Board of Education authorization or to an expert retained by an investigator. (iii) Upon request for a hearing under Section 53E-6-506, a prosecutor operating under State Board of Education authorization may display the recording or transcript to a pro-se respondent, to an attorney retained by the respondent, or to an expert retained by the respondent.



duties so that the rights in this chapter are not provided, an action for injunctive relief may be brought against the individual and the government entity that employs the individual. (b) For all other violations, if the committee finds a violation of a victim's right, it shall refer the matter to the appropriate court for further proceedings consistent with Subsection 77-38-11(2). (c) The failure to provide the rights in this chapter or Title 77, Chapter 38, Rights of Crime Victims Act, does not constitute cause for a judgment against the state or any government entity, or any individual employed by the state or any government entity, for monetary damages, attorney fees, or the costs of exercising any rights under this chapter. (6) The person accused of and subject to prosecution for the crime or the act which would be a crime if committed by a competent adult, has no standing to make a claim concerning any violation of the provisions of this chapter. Section 62. Section 77-38-302 is amended to read: 77-38-302. **Definitions.** As used in this part: (1) "Convicted person" means a person who has been convicted of a crime. (2) "Conviction" means an adjudication by a federal or state court resulting from a trial or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity, or not guilty but having a mental illness regardless of whether the sentence was imposed or suspended. (3) "Fund" means the Crime Victim Reparations Fund created in Section [63M-7-526] 67-5d-323. (4) "Memorabilia" means any tangible property of a convicted person or a representative or assignee of a convicted person, the value of which is enhanced by the notoriety gained from the criminal activity for which the person was convicted. (5) "Notoriety of crimes contract" means a contract or other agreement with a convicted person, or a representative or assignee of a convicted person, with respect to: (a) the reenactment of a crime in any manner including a movie, book, magazine article, Internet website, recording, phonograph record, radio or television presentation, or live entertainment of any kind; (b) the expression of the convicted person's thoughts, feelings, opinions, or emotions

regarding a crime involving or causing personal injury, death, or property loss as a direct result

of the crime; or (c) the payment or exchange of any money or other consideration or the proceeds or profits that directly or indirectly result from the notoriety of the crime. (6) "Office" means the Utah Office for Victims of Crime created in Section 67-5d-301. (7) "Profit" means any income or benefit: (a) over and above the fair market value of tangible property that is received upon the sale or transfer of memorabilia; or (b) any money, negotiable instruments, securities, or other consideration received or contracted for gain which is traceable to a notoriety of crimes contract. Section 63. Section 78B-6-2105 is amended to read: 78B-6-2105. Civil action for enforcement -- Penalties. (1) A person who predominately distributes or otherwise predominately provides pornographic material to consumers with the intent to earn revenue or profit directly or indirectly from the distribution may not distribute any obscene material or performance as defined in Section 76-10-1203 without first giving a clear and reasonable warning of the harmful impact of exposing minors to the material or performance. The warning of the harm shall be prominently displayed in the following form: "STATE OF UTAH WARNING Exposing minors to obscene material may damage or negatively impact minors." (2) (a) For print publications created after May 12, 2020, the warning in Subsection (1) shall be placed in clear, readable type on the cover of each publication which includes material as defined in Section 76-10-1201. (b) For digital publications: (i) the warning in Subsection (1) shall be displayed in searchable text format and for at least five seconds prior to the display of any video or each image which includes material as defined in Section 76-10-1201; or (ii) if the website complies with Subsection 78B-6-2103(3), it is not required to display the warning in Subsection (1) prior to each video or image contained on the website. (3) A person who violates this section shall be liable for a civil penalty not to exceed \$2,500 per violation, plus filing fees and attorney fees, in addition to any other penalty

established by law, and enjoined from further violations. The civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction. Each of the following violations shall create a separate liability per violation: (a) the sale or display of potentially harmful content without the warning required in Subsection (1), in accordance with Subsection (2); or (b) the absence of the following searchable text within the website's metadata utahobscenitywarning. (4) The determination by a court as to whether a person is distributing material the state considers to be obscene material or performance as defined in Section 78B-6-1203 shall be proven by clear and convincing evidence. All other elements of proof shall be proven by a preponderance of the evidence. (5) The court, in ordering payment, shall specify each amount for the civil penalty, filing fees, and attorney fees. (6) In assessing the amount of a civil penalty for a violation of this chapter, the court shall consider all of the following: (a) the nature and extent of the violation; (b) the number and severity of the violations; (c) the economic effect of the penalty on the violator; (d) whether the violator took good faith measures to comply with this chapter and when those measures were taken; (e) the willfulness of the violator's misconduct; (f) the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole; and (g) any other factor that the court determines justice requires. (7) Actions pursuant to this section may be brought by the attorney general's office in the name of the people of the state or by a private person in accordance with Subsection (8). (8) A private person may bring an action in the public interest pursuant to this section if: (a) the person has served notice of an alleged violation of Section 78B-6-2103 on the alleged violator and the attorney general's office;

(b) the attorney general's office has not provided a letter to the noticing party within 60

days of receipt of the notice of an alleged violation indicating that: (i) an action is currently being pursued or will be pursued by the attorney general's office regarding the violation; or (ii) the attorney general believes that there is no merit to the action; and (c) the alleged violator has not responded to the notice of alleged violation or returned the proof of compliance form provided in Subsection (14). (9) If a lawsuit is commenced, the plaintiff may include additional violations in the claim that are discovered through the discovery process. (10) Notice of the alleged violation shall be executed by the attorney for the noticing party, or by the noticing party, if the noticing party is not represented by an attorney, and include a notice of alleged violation. The notice of alleged violation shall: (a) state that the person executing the notice believes that there is a violation; and (b) provide factual information sufficient to establish the basis for the alleged violation. (11) A person who serves a notice of alleged violation identified in Subsection (10) shall complete and provide to the alleged violator at the time the notice of alleged violation is served, a notice of special compliance procedure and proof of compliance form pursuant to Subsection (14). The person may file an action against the alleged violator, or recover from the alleged violator if: (a) the notice of alleged violation alleges that the alleged violator failed to provide a clear and reasonable warning as required under Subsection (1); and (b) within 14 days after receipt of the notice of alleged violation, the alleged violator has not: (i) corrected the alleged violation and all similar violations known to the alleged violator; (ii) agreed to pay a penalty for the alleged violation in the amount of \$500 per violation; and (iii) notified, in writing, the noticing party that the violation has been corrected. (12) The written notice required in Subsection (11)(b)(iii) shall be the notice of special compliance procedure and proof of compliance form specified in Subsection (14). The alleged violator shall deliver the civil penalty to the noticing party within 30 days of receipt of the notice of alleged violation.

(13) The attorney general shall review the notice of alleged violation and may confer with the noticing party. If the attorney general believes there is no merit to the action, the attorney general shall, within 45 days of receipt of the notice of alleged violation, provide a letter to the noticing party and the alleged violator stating that the attorney general believes there is no merit to the action.

(14) The notice required to be provided to an alleged violator pursuant to Subsection (11) shall be presented as follows:

"Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are in violation of Utah Code Section 78B-6-2103.

The Noticing Party may bring legal proceedings against you for the alleged violation checked below if:

- (1) you have not actually taken the corrective steps that you have certified in this form;
- (2) the Noticing Party has not received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice; and
- (3) the Noticing Party does not receive the required \$500 penalty payment for each violation alleged from you at the address shown above postmarked within 30 days of your receiving this notice.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

This notice of alleged violation is for failure to warn against an exposure to minors of materials considered harmful to minors. (provide complete description of violation, including when and where observed)

Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with Utah Code Section 78B-6-2103, for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of receipt of this notice, a penalty of \$500 for each violation alleged to the Noticing Party only and certify that I have complied with by (check only one of the following):

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[] Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

CERTIFICATION

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under Utah Code Section 76-10-1206.

Signature of alleged violator or authorized representative:

Date:

Name and title of signatory:"

- (15) An alleged violator may satisfy the conditions set forth in Subsection (14) only one time for a specific violation.
- (16) Notwithstanding Subsection (14), the attorney general may file an action pursuant to Subsection (7) against an alleged violator. In any action, the amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator to a private person in accordance with Subsection (14) for the same alleged violation.
- (17) Payments shall be made in accordance with this section.
- (a) A civil penalty ordered by the court shall be paid to the plaintiff as directed by the

court. (b) A penalty paid in accordance with the special compliance procedure in Subsection (14) shall be made directly to the noticing party. (18) The Utah Office for Victims of Crime shall receive 50% of any penalty paid in accordance with this section. Funds received shall be deposited in the Crime Victim Reparations Fund created in Section [63M-7-526] 67-5d-323. The penalty amount upon which the 50% is calculated may not include attorney fees or costs awarded by the court. (a) If the penalty is paid to a noticing party in accordance with Subsection (14), the noticing party shall remit the required amount along with a copy of the Special Compliance Procedure document. (b) If a civil penalty is ordered by the court, the plaintiff shall remit the required amount along with a copy of the court order. (19) The attorney general's office shall provide to the Utah Office for Victims of Crime a copy of all notices of alleged violations to which the attorney general's office did not respond with a letter of no merit in accordance with Subsection (13). (20) The court shall provide to the Utah Office for Victims of Crime a copy of the court's order for payment. (21) The Utah Office for Victims of Crime shall: (a) maintain a record of documents and payments submitted pursuant to Subsections (18), (19), and (20); (b) create and provide to the Legislature in odd-numbered years beginning November 2021, a report containing the following for the previous two years: (i) the number of notices of alleged violations received from the attorney general's office; (ii) the number of court orders received; and (iii) the total amount received and deposited into the Crime Victim Reparations Fund. (22) This section does not apply to: (a) a person portrayed in obscene or pornographic material that is created, duplicated, or distributed without the person's knowledge or consent; or (b) a person who is coerced or blackmailed into distributing obscene or pornographic

material.

(23) Beginning May 1, 2025, and at each five-year interval, the dollar amount of the
civil penalty provided in Subsection (3) shall be adjusted by the Judicial Council based on the
change in the annual Consumer Price Index for the most recent five-year period ending on
December 31 of the previous year, and rounded to the nearest five dollars. The attorney general
shall publish the dollar amount of the civil penalty together with the date of the next scheduled
adjustment.
Section 64. Repealer.
This bill repeals:
Section 63M-7-501, Title.
Section 63M-7-502, Definitions.
Section 63M-7-505, Board and office within Commission on Criminal and Juvenile
Justice.
Section 67-5b-101, Definitions.
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